

(16,455)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 189⁷

No. 676. 278

SOUTHERN RAILWAY COMPANY, APPELLANT,

versus

CARNEGIE STEEL COMPANY (LIMITED).

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIR-
CUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

INDEX.

	Page.
Bill of complaint of William P. Clyde et al.....	1
Order appointing Foster and Heidekoper, re- ceivers	19
Petition for issue of receivers' certificates and pay- ment of coupons.....	22

	Page.
Exhibit 1—Deed Richmond and Danville Railroad Co. to Davenport and Roberts, trustees..	28
Exhibit 2—Deed, Richmond and Danville Railroad Co. to Central Trust Co.....	43
Exhibit 3—Deed, Richmond and Danville Railroad Co. to Central Trust Co., Consolidated Mortgage	56
Supplemental Agreement with Consolidated Mortgage, Part of Exhibit 3.....	77
Exhibit 4—Deed, Richmond and Danville Railroad Co. to Central Trust Co., Equipment Sinking Fund Five Per Cent. Mortgage.....	82
Exhibit 5—Deed, Richmond and Danville Railroad Co. to Central Trust Co., Equipment Sinking Fund Six Per Cent. Mortgage.....	112
Notice of motion for order authorizing receivers' certificates.....	133
Order authorizing issue of receivers' certificates...	134
Petition of Central Trust Company to be made party so suit.....	138
Notice of presenting petition to approve extension of debt holding collateral.....	142
Petition to approve extension of debt holding collateral.....	143
Exhibit A, with foregoing petition.....	146
Exhibit B, with foregoing petition.....	148
Exhibit C, with foregoing petition.....	152
Order on foregoing petition.....	153
Report of Heidekoper and Foster, receivers.....	154
Order of petition of Central Trust Co., allowing it to intervene.....	167
Petition of Central Trust Co. and others for appointment of permanent receivers.....	167
Order appointing permanent receivers and directing account of indebtedness of defendant railroad company to be taken.....	172
Petition of underlying bond holders.....	174
Order on foregoing petition.....	176
Exhibit A with foregoing petition.....	177
Affidavit of E. F. Hyde.....	182

INDEX.

III

Page.

Exhibit A with foregoing affidavit and schedule of bonds.....	183
Notice of filing of petition of receivers for leave to purchase four locomotives.....	186
Petition of receivers for leave to purchase four locomotives.....	187
Order on foregoing petition.....	188
Notice of filing of petition of complainants as to office building.....	189
Petition of complainants as to office building.....	190
Order on foregoing petition.....	193
Notice of filing of petition of Moore & Schley.....	194
Petition of Moore & Schley.....	195
Order on foregoing petition.....	203
Petition of E. R. Schneider.....	205
Exhibit with foregoing petition—Schedule of Judgments Paid.....	207
Notice of filing foregoing petition.....	207
Order on foregoing petition	208
Report of special masters and auditors.....	209
Order on foregoing report.....	213
Order setting for hearing certain claims.....	213
Petition of complainants for deposit of collaterals, Order allowing deposit of collaterals under plan of reorganization.....	216
Petition of receivers for appointment of master to audit their accounts.....	218
Order appointing special master and auditor.....	219
Report of special master and auditor.....	220
Order confirming foregoing report of special master and auditor.....	222
Bill of complaint of Central Trust Co. for foreclosure of consolidated mortgage	223
Order appointing Spencer, Foster and Huidekoper receivers.....	240
Order authorizing payment of instalments on car trusts and equipment contracts.....	244
Order authorizing payment of interest on floating debt.....	245

	Page.
Petition of receivers for leave to purchase steel rails.....	245
Order on foregoing petition.....	246
Petition of receivers for leave to purchase eight locomotives.....	247
Order on foregoing petition.....	248
Order consolidating causes.....	249
Order for special masters to file report.....	250
Petition of receivers for leave to purchase steel rails.....	251
Order on foregoing petition.....	252
Report of special masters.....	253
Decree of foreclosure and sale.....	262
Petition of receivers for leave to purchase half interest in cotton compress.....	283
Exhibit A with foregoing petition.....	285
Order on foregoing petition.....	287
Special masters' report of sale.....	289
Motion of purchasers to confirm special masters' sale.....	293
Order <i>nisi</i> on report of sale and motion for confirmation thereof.....	295
Decree confirming special masters' sale.....	297
Report of receivers.....	301
Order on report of receivers.....	306
Report of receivers.....	307
Exhibit O with foregoing report.....	326
Order of sale on report of receivers.....	328
Receivers' report of sale.....	338
Memorandum of sale and notice for confirmation— Schedule C to report of receivers.....	350
Decree confirming sale and ordering conveyance...	352
Affidavit of Carnegie Steel Company, Limited.....	355
Statement	358
Petition of Carnegie Steel Company, Limited.....	359
Answer of Central Trust Co. to petition of Carnegie Steel Co., Limited.....	362
Order consolidating causes.....	364
Petition of Carnegie Steel Co., Limited.....	365
Notes with foregoing petition.....	372

Statement with foregoing petition.....	374
Order making Carnegie Steel Co., Limited, party defendant.....	375
Answer of complainants to petition of Carnegie Steel Co., Limited.....	375
Amendment to petition of Carnegie Steel Co., Limited.....	379
Special masters' report.....	381
Stipulations with counsel of Carnegie Steel Co., Limited.....	387
Deposition of W. H. Green.	390
Deposition of A. S. Dunham.....	391 405
Copy N. Y. office cash account March and April, 1892.....	407
Deposition of A. S. Dunham.....	414
Statement of A. S. Dunham attached to his depo- sition.....	415
Exhibit B with deposition of A. S. Dunham.....	422
Exhibit D with deposition of A. S. Dunham.....	434
Exhibit C with deposition of A. S. Dunham, Lease—Virginia Midland Railway Co. to Rich- mond and Danville Railroad Co.....	437
Exhibit C with deposition of A. S. Dunham, Lease—Piedmont Railroad Co. to Richmond and Danville Railroad Co.....	451
Exhibit C with deposition of A. S. Dunham, Lease—Northeastern Railroad Co. to Rich- mond and Danville Railroad Co.....	455
Complainants exceptions to masters' report on in- tervention of Carnegie Steel Co., Limited.....	468
Exception of Carnegie Steel Co., Limited, to re- port of special masters.....	469
Final decree.....	470
Petition for appeal.....	472
Assignment of errors.....	473
Decree allowing appeal.....	476
Supersedeas bond.....	477
Citation	478
Clerk's certificate.....	479

Deposition of W. H. Green.....	481
Complainants Exhibit No. 1 mentioned on page 367 in petition of Carnegie Steel Company, Limited	503

**PROCEEDINGS IN UNITED STATES CIRCUIT COURT
OF APPEALS, FOURTH CIRCUIT:**

Docket entries.....	585
Opinion.....	486
Decree.....	499
Petition and order to stay mandate	500
Clerk's certificate.....	501

**PROCEEDINGS IN THE SUPREME COURT OF THE
UNITED STATES:**

Writ of certiorari and return.....	565
------------------------------------	-----

TRANSCRIPT OF RECORD.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

The Southern Railway Company,	}
Purchaser,	
	Appellant,
<i>vs.</i>	}
The Carnegie Steel Company,	
Limited,	Appellee.

In case of

The Central Trust Company and others	}	Consolidated Cause.
<i>vs.</i>		
The Richmond and Danville Rail- road Company and others.		

Be it remembered that heretofore, to-wit: On the 15th day of June, 1892, came William P. Clyde, a citizen of the State of New York, and others, by their solicitors, and filed their bill of complaint against the Richmond and Danville Railroad Company and others, which said bill is in the words and tenor following:

BILL OF COMPLAINT.

IN THE CIRCUIT COURT OF THE UNITED STATES, EASTERN
DISTRICT OF VIRGINIA.

UNITED STATES OF AMERICA. }
Eastern District of Virginia, } *ss:*

To the Honorable Judges of said Court, in Equity Sitting:

William P. Clyde, who is a citizen of the State of New York; John C. Maben, who is a citizen of the State of New York; William H. Goadby, who is a citizen of the State of New York, who sue for themselves and other creditors and stockholders of the corporations who are made defendants herein, who may choose to become parties to this suit and contribute to the expenses thereof, exhibit

this bill of complaint against the Richmond and Danville Railroad Company, a corporation organized and existing under the laws of the State of Virginia and a citizen of such State, and the Richmond and West Point Terminal Railway and Warehouse Company, a corporation organized and existing under the laws of the State of Virginia and a citizen of such State, and show to the court :

First. That the said Richmond and Danville Railroad Company, hereafter called the Danville Company, was created by the State of Virginia on March 9th, 1847, and under the powers conferred by its original charter and divers amendments thereto, it was authorized not only to locate, construct and operate the particular line of railroad therein designated between Richmond and Danville, but also to acquire the control of other railroads and transportation lines, both in the State of Virginia and elsewhere, by purchase or lease of such properties, and to own the stocks and bonds thereof and guarantee the same and operate and manage all such other lines of railways and enjoy the income thereof.

Its own charter line of road is wholly within the State of Virginia and extends from Richmond to Danville, with a 12-mile branch, being about 152 miles of road. Its main office is in the city of Richmond. Its present authorized and outstanding capital stock is five million (\$5,000,000.00) dollars, of which twenty-three thousand, eight hundred (\$23,800.00) dollars is owned by private individuals and four million, nine hundred and seventy-six thousand, one hundred (\$4,976,100.00) dollars is owned by its co-defendant company and has been by it pledged to secure divers debts, as hereafter detailed.

Besides its own charter line of railroad, said Danville company has, through purchase or acquisition of stock, or by written lease or operating contracts, obtained the possession and control of twenty-six other railways built under the respective charters of and owned by the following corporations :

	Railroad Co.
Piedmont	" "
Milton and Sutherlin	" "
State University	" "
Richmond, York River and Chesapeake	" "
North Carolina	" "
Atlanta & Charlotte Air Line	" "
Washington, Ohio & Western	" "
North Western North Carolina	" "
Clarksville & North Carolina	" "
Oxford & Clarksville	" "

	Railroad Co.
Virginia Midland	" "
Western North Carolina	" "
Charlotte, Columbia & Augusta and leased lines.	" "
Columbia & Greenville and leased lines.	" "
Georgia Pacific	" "
Statesville & Western	" "
Oxford and Henderson	" "
Richmond and Mecklenburg	" "
Northeastern of Georgia	" "
High Point	" "
Asheville & Spartanburg	" "
Elberton Air Line	" "
Lawrenceville	" "
Roswell	" "
Hartwell	" "
Yadkin	" "

and also owned the entire capital stock of the Baltimore, Chesapeake & Richmond Steamboat Company, and through it operated a line of steamers between Richmond, West Point & Baltimore.

The lines of railway comprising said Danville system are situated in Virginia, North Carolina, South Carolina, Georgia, Alabama and Mississippi, and reach many of the most important trade centres of such States.

For over five years last past, the said Danville company has held in possession and substantially controlled all the railways of said twenty-six other companies, in connection with its own road, as a single system, being operated with one set of chief executive officers, books and accounts. Over a large portion of the mileage of the system the engines and cars in traffic service are used indiscriminately, without any fixed or absolute apportionment thereof to any specific portion of the system, and the income derived from the operations of the parent and auxiliary, leased and operated lines were received and distributed through a common treasury, with no separation of the earnings and expenses of the several properties, except by entries in the books of account purporting to apportion the gross income and expenses on some approximate but arbitrary basis of division as between the different lines of the system over which the traffic yielding the revenue had passed.

The total mileage of the auxiliary portion of said Danville system added to its own mileage of one hundred and fifty-two miles, makes a total length of three thousand

three hundred and twenty miles of railroad, exclusive of its steamer service. Its capitalization and indebtedness are as follows :

The aggregate outstanding capital stock of twenty-seven railway corporations whose lines are included in such system, together with the two hundred and fifty thousand (\$250,000.00) dollars stock of such steamboat company, amounts to forty-three million, four hundred and eighty-two thousand, nine hundred and fifty (\$43,482,950) dollars, of which ten million, seven hundred and seven thousand, three hundred and fifty-four (\$10,707,354.00) dollars is neither owned nor controlled by either of the defendants hereto.

Some of the said roads are operated by the Danville Company as proprietary lines, through the ownership of all, or a majority of the stock thereof ; others are operated upon the basis of either a fixed rental or payment of net earnings ; or a guarantee of interest on bonds, or dividends on stock, or both.

The bonded debts of such roads and the rental obligations which the Danville Company has assumed, and became liable for in consequence of its absorption of such roads in its system by lease or contract, amounts to seventy-one million, one hundred and seventy-eight thousand, one hundred and twenty-six (\$71,128,126.00) dollars. Its own direct bonded debt is sixteen million, one hundred and thirty-six thousand (\$16,136,000.00) dollars, making a total bonded and rental debt of the Danville system of eighty-seven million, three hundred and fourteen thousand, one hundred and twenty-six (\$87,314,126.00) dollars.

The bonded debt resting on its own road and equipment is in five separate issues of securities. The bonded debt resting on its auxiliary and operated lines is embraced in fifty-nine different classes of securities issued by the several companies, secured by separate mortgages or deeds of trust covering different sections of such controlled roads or their equipment, capable of separate default or foreclosure, besides five stock guarantees, representing certain of its rental obligations, also secured by provisions for re-entry on default.

Said Danville Company also has outstanding car trust obligations of its own and leased lines, amounting to one million, five hundred and forty-two thousand, eight hundred and twenty-four (\$1,542,824.00) dollars, and has a floating debt of over five million (\$5,000,000.00) dollars, a considerable part of which was accommodation paper given at the request of said Terminal Company, to enable it to realize funds to pay its debts created by the purchase of non-

remunerative properties; and also an emergency loan of six hundred thousand (\$600,000.00) advanced by those interested in the property to prevent default on April 1st, 1892.

Besides all such outstanding fixed liabilities on account of its own road and controlled lines, its board of directors have pledged its credit and subjected it to other heavy liabilities, to enable its co-defendant, the Terminal Company, or certain of its controlled companies to acquire the stock control of other lines of railroads, not directly connecting with or operated by the Danville Company, and in which it has no interests whatever.

Its directors have issued six million (\$6,000,000.00) dollars of bonds of the Danville Company executed jointly and severally with the East Tennessee, Virginia and Georgia Company, and guaranteed by the Terminal Company "Cincinnati Extension Bonds," which were secured by a trust pledge of preference and ordinary shares of the Alabama and Gt. Southern Railway Company (limited). Such six million (\$6,000,000.00) dollars bonds have been sold in the open market, and apparently constitute an outstanding liability of the Danville Company, but for which it has received no valuable consideration whatever, but executed the same as mere accommodation paper, and as a partnership adventure, and is only protected against loss by the aforesaid pledge of corporate stock of uncertain value, because it is subject to heavy prior mortgage debts, and the line of road of the particular corporation which issued such stock is a central link in the system of the East Tennessee Railway system, over which the Danville Company has no control whatever.

By reason of the said absolute stock control which the Terminal Company has over the Danville Company, it compelled the latter company about June 1st, 1891, to become the assignee and guarantor of a written lease executed by the Central Railroad and Banking Company of Georgia, of all its system of railroads and steamer lines, for a long term of years, to the Georgia Pacific Railway Company, whereby the said Danville Company became obligated to operate said Central System and to assume and pay all the interest on the bonded debts and all the rental obligations of said Central of Georgia Company, and also an annual dividend of seven per cent. upon the entire capital stock of said Central of Georgia Company; and the said Danville Company was compelled to execute and deliver a bond for one million (\$1,000,000.00) dollars, to faithfully perform all the covenants in such lease.

The result of the operation of such Central of Georgia

gate bonded debt and fixed rental obligations capitalized of fifty-six million, nine hundred and fourteen thousand, (\$56,914,000.00) dollars. It owns also, car trust obligations of Eight hundred and twenty-six thousand, seven hundred and forty (\$826,740.00) dollars, and a floating debt of one million, two hundred and ten thousand (\$1,210,000.00) dollars.

The bonded debt of such system is divided into twenty distinct classes of securities, capable of separate default and foreclosure on some part of the system or equipment.

The Terminal Company also owns twelve million (\$12,000,000.00) dollars, being the whole capital stock of the Georgia Company, a corporation which bought and is the registered owner of the majority of the capital stock of the Central Railroad and Banking Company of Georgia, hereafter called the Central Company, being four million, two hundred and thirty-one thousand, six hundred (\$4,231,600.00) dollars, shares out of a total of seven million, five hundred thousand (\$7,500,000.00) dollars, but all the stock of the Central Company so owned by the Georgia Company is specially pledged to secure the four million \$4,000,000.00) dollars of Georgia Company Trust Bonds, and the market value is only about sixty per cent. of the specific prior debt for which it stands charged.

About June 1st, 1891, the road and leased lines of the Georgia system were, in form, leased to the Georgia Pacific Company and the Danville Company, by assignment of the latter, operated the central system of roads and steamers at a heavy loss, until about April 1st, 1892, when, by a decree in the Circuit Court of the United States for the Eastern District of Georgia, it was decided that its possession and operation was unlawful and that the four million, two hundred and thirty-one thousand, six hundred (\$4,231,600.00) dollars of stock in the Central Company was disqualified from voting for directors of that company and possession of the whole system was taken out of the hands of the Danville Company by the appointment of receivers and an injunction granted enjoining voting on any of such majority stock, and since such decree the Danville Company has not had any possession or control over such system.

The twelve millions (\$12,000,000.00) dollars of Georgia Company stock and such four million, two hundred and thirty-one thousand (\$4,231,000.00) dollars of stock in the Central Company represents simply an equity in that system of roads and steamers, subject to its bonded and rental liabilities and floating debt.

Such system is 2,819 miles in length. The aggregate

capital stock of the several companies included is twenty-two million, seven hundred and ten thousand, six hundred and three (\$22,710,603) dollars, and the bonded debt and guaranteed stock assumed as rental is fifty-three million, six hundred and fifty-eight thousand, eight hundred (\$53,658,800.00) dollars, divided into thirty-four distinct classes of securities, each capable of separate default and enforcement on some part of the system or equipment.

The Terminal Company nominally own bonds and stocks in the three different systems as follows :

	Stocks.	Bonds.
Danville system,	26,315,446	8,941,000
Tennessee “	21,199,200	
Central Georgia “	4,231,600	
Georgia Co.,	12,000,000	3,447,000

Of such securities, seventeen million two hundred and ninety-six thousand nine hundred (\$17,296,900.00) dollars par value of divers stocks and bonds were pledged by said Terminal Company on February 1st, 1887, to secure its issue of five million, five hundred thousand (\$5,500,000) dollars of six per cent. collateral trust bonds due on February 1st, 1897, by a deed of trust executed to the Central Trust Company of New York, a copy of which is herewith filed and made part hereof as Exhibit A.

On March 1st, 1889, the said Terminal Company executed to said Trust Company another deed of trust, a copy of which is herewith filed and made part hereof as Exhibit B; whereby to secure its eleven million and sixty-five thousand (\$11,065,000.00) dollars of five per cent. bonds, it pledged divers more of such securities therein scheduled, amounting at par to \$40,845,300, and also created a second lien on the stocks and bonds pledged under the above-named trust deed of February 1st, 1887, and also a second lien upon two million five hundred thousand one hundred (\$2,500,100) dollars of Danville Company stock before that deposited as security for the benefit of the preferred stock of the Terminal Company, as per agreements of December, 6th, 1886, and September 30th, 1887.

As collateral security for the demand loans of the Danville Company, endorsed by the Terminal Company, there have been also pledged to divers banks, trust companies and individuals, other bonds and stocks amounting to ten million ninety-six thousand three hundred (10,096,300.00) dollars at par value.

To protect securities upon divers bonds, said Terminal

Company has also deposited in pledge other of such stocks and securities amounting at par value to three hundred and eighty-one thousand (\$381,000.00 dollars).

Third. The five several issues of bonds of the Danville Company are secured by mortgages to divers trustees, and constitute liens of varying rank upon some portion of its railroad, franchises and equipment.

When the said Danville Company in March, 1892, was in such extreme financial difficulty that its friends were compelled to furnish it an emergency advance of six hundred thousand (\$600,000.00) dollars, it executed an agreement in writing, a copy whereof is herewith filed, and made part hereof, as exhibit C, whereby it pledged the income and earnings of its whole system for the security of such special loan, and agreed to pay the same out of its income on June 1st, 1892, but it has not paid any part thereof, and alleges that it is unable to do so, and the condition of such pledge of income is broken and remains in default, and subject to immediate enforcement; at and after the maturity of said loan *demanded* for the payment was made of the Danville Company and also of the Trust Company for the moneys agreed to be deposited with it, but no part of the same was paid, and the said Central Trust Company stated that no money had ever been deposited with it under such agreement. Complainants aver that there was a large amount of net earnings realized which should have been deposited under such pledge, but the same were diverted by the company to other purposes, and the said Trust Company wholly failed to perform its trust and enforce the deposit of such net earnings.

Fourth. The bonds issued by the Danville and Terminal Companies, as well as a large majority of all the several issues of bonds resting on the different separately mortgaged sections of the Danville system, are owned by a large and constantly shifting number of persons and corporations who are scattered in many different States and countries, and who have no organization or registration, and therefore, their names, residence and amount, and class of their holdings are, for the most part, wholly unknown to the complainants. The emergency loan, due June 1st, 1892, for which the income of the Danville system was pledged, was advanced in equal sums by a considerable number of persons, many of whom prefer not to have their names or advances disclosed.

John C. Maben, one of the complainants, is now, and has been, for several years, a registered stockholder of the Danville Company.

The complainants also own large amount of the common preferred stock of the Terminal Company, and of its six per cent. and five per cent. bonds, and of the Danville Company's debenture and five per cent. bonds, and also a large amount of different classes of bonds resting on parts of the Danville system.

Some of the complainants also contributed to the emergency loan of March, 1892, and are creditors of the Danville Company on that account, and entitled to the security of the aforesaid pledge of income.

The aggregate amount at par, of the stock holding interests of complainants exceeds one million dollars, and of the said bonds and debts will exceed one-half million dollars, and the complainants are, in addition, representatives of other bond-holding interests in such property to an amount exceeding two million (\$2,000,000.00 dollars).

Fifth. While nominally distinct corporations, the actual transactions and financial arrangements between the Terminal Company conducting no active business as a security company, with no assets except stocks and bonds, and the Danville Company as a corporation operating a large system of railways separately organized and mortgaged, have resulted in serious complications and the said corporations have for several years had a common president and substantially the same directors.

The Danville Company owns and represents the tangible property—the roads themselves—while the Terminal Company represents only the underlying equity subject to the debts.

The Terminal Company is the owner of and votes upon nearly the entire capital stock of the Danville Company. A majority of such stock has, however, been pledged as a security for dividends upon the preferred stock of the Terminal Company and none of the Danville stock is in the actual possession of the Terminal Company, but is pledged to secure the bonds of the latter company, and is, therefore, subject to be sold at forced sale, if it should default in the payment of interest on its obligations.

The Danville Company does not own nor operate any part of the East Tennessee system, but it has executed, as hereinbefore alleged, a partnership, interest-bearing obligation of six million (\$6,000,000.00) dollars, which the Terminal Company has guaranteed.

At the bidding of the Terminal Company the Danville Company assumed to operate the Central of Georgia system, and pay seven per cent. dividends on its capital stock, of which the Terminal Company held a majority, and executed a million-dollar bond to perform its obligations.

The Terminal Company is the endorser upon several millions of dollars of the negotiable paper of the Danville Company, which is subject to demand of payment at any time, and, as collateral security for such loans, a large amount of the bonds and stocks separately owned by the Terminal Company, and a large amount of the bonds and stocks separately owned by the Danville Company, are indiscriminately pledged to the aggregate of over ten millions (\$10,000,000.00) of dollars, at par value. The Terminal Company has also guaranteed the Emergency Loan of six hundred thousand (\$600,000.00) dollars made by the Danville Company in March, 1892.

Such community of heavy and extra-hazardous liability and hypothecation indissolubly connects the financial operations of the two companies, so that the unrelieved embarrassment of either company will necessarily force the insolvency of the other and produce a disruption of the system of roads.

Sixth. The present financial condition of the two defendant corporations is most serious and alarming to the holders of their stocks and bonds.

The Terminal Company has no assets whatever except stocks and bonds of divers corporations, and the income therefrom constitutes its sole resource to pay the semi-annual interest upon the \$16,732,000 of its own six per cent. and five per cent. issues and the four million (\$4,000,000.00) dollars of Georgia Company bonds. Such yearly fixed charge on its income, payable semi-annually, amounts to nearly \$900,000.00.

Of its total stated revenue of one million, two hundred and eighty-nine thousand, nine hundred and thirty-three dollars and ninety-four cents (\$1,289,933.94), for the year ending November 30, 1891, the main contributions were as follows:

Danville Company, dividends on stock,	\$497,620 00
East Tennessee Company, dividends on stock,	175,664 00
Central of Georgia Co., " " "	316,964 00

Making a total of \$990,248 00

The present earnings and financial necessities of these properties are such as to demonstrate that there is no likelihood whatever that either of them can or will earn, declare, or pay any dividend on the stock held by the Terminal Company.

Complainants file herewith a copy of the last official report of said Terminal Company, and make the same a part hereof as Exhibit D.

It fully appears therefrom, on page 12, that a large majority of the bonds and stocks owned by it yield no return whatever, and that substantially the entire amount of its cash income is covered by the dividends on the three stocks aforesaid, for the continuance of which there is no prospect whatever.

The residuum of securities still in the actual custody of said Terminal Company not embraced in the Trust agreements securing its bonds, or pledged as collateral to the Danville Company's floating debt, produces either none or insignificant income, and is of inconsiderable market value.

The Terminal Company's five million, five hundred (\$5,500,000.00) dollars six per cent. bonds mature in less than five years, and interest is payable thereon in August and February of each year.

Interest on its five per cent. bonds is due in September and March of each year.

The main line of the Danville Company is operated with great profit, but several of its operated roads are a drain upon and wholly exhaust the surplus received from the better portion of the system.

The total deficit on the Georgia Pacific on all accounts amounted, by the last official report, to one million, five hundred and nine thousand, five hundred and thirty-one dollars and eighteen cents (\$1,509,531.18).

Complainants file herewith a copy of the last official report of that Company for the year ending June 30th, 1891, and pray that it be taken as a part hereof, as Exhibit E.

It fully appears upon page 11 thereof that, while upon its system other than the Georgia Pacific, the net surplus of income, after working expenses, taxes and fixed charges had been satisfied, was \$1,324,111.22. The total deficit resulting from the year's operations of the Georgia Pacific was \$1,509,531.18; so that, upon the whole system, the year's showing was an actual deficit of nearly two hundred thousand (\$200,000.00), without taking into account the interest on its floating debt, or the added expenditures of six hundred and thirteen thousand, seven hundred and thirty-seven dollars and eighty-four cents (\$613,737.84), for improvements and betterments, and charged to cost of road-way and property, and not included in the income account.

The official reports and exhibits show that the bonded and floating debt of the Danville Company has been constantly and heavily increased in the last four years.

In 1887 its bonded debt was	\$10,199,300
In 1890 " " " "	13,461,160
In 1891 " " " "	16,136,000

Its bills payable were, in 1889,	\$ 500,000
" " " " 1890,	1,220,985
" " " " 1891,	3,364,781

And according to a statement of the Company, dated March 25th, 1892, then exceeded five million, two hundred and twenty-three thousand, nine hundred and twenty-eight (\$5,223,928.00) dollars, exclusive of the emergency loan of six hundred thousand (\$600,000.00) dollars.

Seventh. In the latter part of 1891, the large and increasing floating debts of the several properties in which the Terminal Company is interested, and the heavy losses incurred in the operations of some of the operated roads, created much alarm among the stockholders and creditors.

In its report of November 30th, 1891, while it was stated that the Terminal Company "owes no floating debt whatever and has a cash balance in bank of \$218,634.09," it was also declared that it was impossible to sell their treasury securities at satisfactory prices, and "the result is that a large floating indebtedness exists on each of your important systems."

For such reason the management invited six prominent financiers to investigate the several systems and aid "in perfecting the best plan for permanently adjusting your affairs and securing sufficient money to provide for the floating indebtedness existing on your railroad companies and to insure for your company and them the credit necessary for their successful operation.

Such bankers' committee entered upon the performance of the work to which they had been invited, but sharp differences of opinion arose in the Board of Directors of the two companies as to the wisdom of such course, which resulted in the discharge of the committee without formulating any plan of relieving the financial embarrassment of the companies.

Divers of such directors resigned and the market value of the shares and bonds of the properties began to heavily decline.

A second bankers committee was organized about February, 1892, commonly called the Olcott Committee, which, after an exhaustive investigation of the roads, assets and financial condition of the companies, prepared and issued a plan which contemplated a total dissolution and winding up of both the defendant corporations and the devolution of all their property to an entirely new corporation, to issue for the purpose of exchange of present securities and payment of floating debt,

\$160,000,000 of 4 per cent. bonds.
70,000,000 of preferred stock.
110,000,000 of common stock.

A copy of such plan is herewith filed and made a part hereof as Exhibit F.

It is therein stated that the cash required to pay the Danville floating debt and car trusts amounts to six millions, six hundred and forty-two thousand (\$6,642,000) dollars, and that "receiverships, bankruptcy, disintegration of the properties and ruinous sacrifice of securities are inevitable unless a remedy be applied without delay."

This plan was prepared and widely circulated among security holders with the assistance of the companies and earnestly advocated by their directors and officers.

Pending the effort to secure its effective acceptance by stockholders and creditors of all classes, it became absolutely necessary for the friends of the property to advance the aforesaid six hundred thousand (\$600,000.00) dollars emergency loan to prevent default and insolvency on April 1st.

Afterwards, on April 25th, 1892, the president of both the defendant corporations wrote an official letter to the chairman of the Oleott Committee with an accompanying statement showing the extreme financial embarrassments of the roads, and that the immediate money necessities for obligations maturing during June amounted to over two million (\$2,000,000.00) dollars, over and above all estimated receipts from the operations of the road.

Such president concluded his letter by declaring "unless provision is made for the financial needs of the companies in season most serious danger is threatened, and should the holders of the demand obligations of the two companies become alarmed a crisis may at any time be precipitated."

Complainants herewith file a copy of the said letter, and make the same a part hereof as "Exhibit G."

Notwithstanding the most industrious efforts to carry out such plan and prevent insolvency and default, it was ascertained about the middle of May that it would not receive the assent of sufficient security-holders, and it was declared to be abandoned.

About the last of May a large number of security-holders joined in a request to an eminent banking firm of New York city that it should investigate the property and its financial condition, and undertake to rescue it from the bankruptcy, shrinkage in value and disruption with which the system was threatened.

Such bankers consented to cause an examination to be made, and complainants are advised that the same is in progress, but that no conclusion has been reached or report made, and necessarily the creditors and security holders are so numerous, scattered and unknown, and the classes of liens so varied in character and value that to perfect any satisfactory plan to reorganize the system and secure the necessary creditors' assent will require considerable time.

Eighth. In the meantime, however, the financial embarrassments continue to be most urgent and threatening, and the possible consequence thereof may result in the disruption of the system and the depreciation of millions of dollars in the value of the securities.

Many of the acquisitions of properties and issues of securities are charged to be beyond the corporate capacity, and constructively fraudulent. The indebtedness has been constantly and heavily increasing by reason, to a large extent, of the fact that the Terminal Company has, by reason of its control of the Danville Company, been conducting the affairs of the latter wholly in the interest of the Terminal Company, and forced it to enter into contracts and leases which, while largely unprofitable and resulted in great losses to the Danville Company, but great personal profit to divers of the directors of said Terminal and Danville Companies.

The revenues of the roads is not sufficient to legitimately return any dividends on the stock owned by the Terminal Company, which is practically its sole reliance to pay the annual interest of \$883,250 on its own bonds, so that a default in the next maturing coupon is inevitable.

The enormous floating debt of the Danville Company is wholly beyond its financial ability to carry out of its ordinary revenues. Over four million five hundred thousand (\$4,500,000.00) dollars of such debt stands in demand loans subject to summary enforcement.

By reason of the depreciation in the market value of its securities, and the failure of the several efforts to reorganize the property, its credit has been much impaired. It is not able to pay its obligations as they mature, but has been forced to ask renewals. It has no available collateral to enable it to negotiate such a loan as is necessary to adequately protect it against open default. It has been forced to postpone payment of usual operating expense vouchers for supplies, and are allowing heavy arrears of such debts to accrue. Many creditors have brought suits and attached cars and funds forwarded to pay employees.

Besides its floating debt, mortgage coupons on 17 sectional mortgages, aggregating \$989,000, fall due on July 1st next. It has no available money or assets wherewith to pay the debts which mature within the next twenty days, and no reasonable hope of financial assistance from any quarter to enable it to do so. Its directors have had no meeting for over two months, but have practically abdicated their trust and power of management, and confessed their utter inability to devise means to divert the insolvency and disruption of the system in their charge. Complainants charge that said corporation is insolvent and this vast trust property is substantially derelict.

Complainants aver that the unity of the property, as now held and operated as an important trunk line, constitutes one of the most important ingredients of its value, and that to permit its severance will result in a ruinous sacrifice to every interest in the property.

The owned and operated lines of road lie in six states, and are subject to the jurisdiction of the courts in each of the many counties in which the property is situate.

Complainants verily believe that unless the court, in view of the impending and inevitable defaults, as aforesaid, will deal with the property as a single trust fund, and take it into judicial custody for the protection of every interest therein that, immediately upon default, individual creditors will assert their remedies in different courts in the several states.

A race of diligence will result. Judgments and priorities will be attempted. Levies and attachments will be laid upon the engines and cars of the company, and the fuel, material and supplies which are indispensable to the operations of the road will greatly interfere and ultimately prevent the company from a proper discharge of its duties as a public carrier, and seriously diminish the earnings of the road. Divers of the lessors of the roads now owned will enforce the re-entry covenants of their leases. The continued default of the mortgage debts will produce the the immediate maturity of the bonds. A vast and unnecessary multiplicity of suits will result, and a most important and valuable trust property will be dismembered by the clashing decrees of the many courts exercising jurisdiction at the suit of separate creditors, which might be shielded and preserved as a valuable single trust property by adequate judicial protection, until such time as a satisfactory financial reorganization could be perfected.

Complainants aver that the Central Trust Company is not only the trust depository in the said pledge of income, but is the trustee in over twelve trust deeds executed

by the Danville Company and divers roads in its system, and also trustee for the preferred stockholders and 6% and 5% trust deeds of the Terminal Company. That the trusts and duties in said different deeds as to property, equipment and income, are variant, and in some respect, antagonistic. In case of default and judicial enforcement, their reciprocal rights will have to be construed and decreed by the Court, and such common trustee cannot properly represent such variant trusts; and the bondholders have the equity to apply in their own names to protect the trust estate.

Inasmuch, therefore, as the complainants have no adequate remedy at law for their aforesaid grievances, and can only have relief in equity, they filed this Bill of Complaint in behalf of themselves and all others in like relation to the said properties, and pray the premises considered:

(1.) That due process of law-issue against the defendants, The Richmond & Danville Railroad Company and The Richmond & West Point Terminal Railway & Warehouse Company, and that they be summoned to appear in this Court, and answer this Bill of Complaint, but without oath, all answers under oath being hereby expressly waived under the rules, and to stand to and abide such orders and decrees as the Court may, from time to time, adjudge and enter in the premises.

(2.) That the Court will decree that the complainants as holders of aliquot portions of the emergency loan to the said Danville Company, guaranteed by the said Terminal Company, have a fixed and specific lien upon all and singular the income, tolls and revenues of the said Danville Company and its leased, operated and controlled railroads, and each of them, and that the condition of such pledge of income has been broken and that the holders of such indebtedness are entitled to the enforcement thereof. And, also, that the court will by reference to master ascertain what persons and corporations are the holders and owners of said emergency loan, and thereafter will adjudge and decree the respective amounts due to the complainants of such account as well as all other like holders of such indebtedness; and will decree a proper sequestration of all and singular, the income of the said railroad property for the purpose of liquidating such adjudged indebtedness, interest and the costs and expenses of complainants in securing the said fund and enforcing the rights of those thereto entitled.

(3) That the court will also fully administer the trust

fund in which complainants are interested, constituting the entire railroad and assets of said defendant corporations, and will, for such purpose, marshal all their assets and ascertain the several and respective liens and priorities existing upon each and every part of all the said system of railways, and the amount due upon each and every of such mortgages or other liens, and enforce and decree, the rights, liens and equities of each and all of the stockholders and creditors of said Richmond & Danville Company and said Terminal Company, as the same may be finally ascertained and decreed by the court upon the respective interventions or applications of each and every of such creditor or lienor, in and to not only said lines of railroad, appertences and equipments, but also to and upon each and every portion of the assets and property of each of the said corporations.

(4). That, for the purpose of enforcing a lien and equity upon the income of the railroad system aforesaid, to which the holders of said emergency loan are by contract are entitled, as well as to preserve the unity of said system, as it has been for years maintained and operated, and preventing the disruption thereof by separate executions, attachments or sequestrations, the occurrence of which will be inevitable in view of the inevitable defaults in interest payments which will presently occur, the complainants pray that the court will forthwith appoint one or more receivers of the entire system of railroads and steamers held and operated by the said Danville company, together with all the equipment, material, machinery, supplies, moneys, accounts, choses-in-action and assets of every description and wherever situated, together with all leasehold rights and contracts, with authority to manage and operate the same as the officers of, and under the directions of the court, and that all of the officers, manager, superintendents and employees of the said Danville company be required to forthwith deliver up the possession of all and singular each and every part of the said property, over which the receivers are thus appointed wherever situate; and also all books of account, offices, vouchers and papers in any way relating to the business or operation of said system of railways and steamers, and for an injunction restraining each and every of the officers, directors, managers, superintendents, agents and employees of the said Danville company from interfering in any way whatever with the possession and control of the receivers over any part of said property.

(5). And for such other and further relief as to the court may seem proper, and as may be necessary to fully

enforce the rights and equities of the complainants and of all other creditors and stockholders of such corporations.

WM. P. CLYDE,
JOHN C. MABEN,
WILLIAM H. GOADBY.

HENRY CRAWFORD,
Solicitor.

FRANK P. CLARK,
Solicitor.

NICHOLAS P. BOND,
Solicitor.

STATE OF MARYLAND. }
City of Baltimore. } ss:

William P. Clyde, on oath, says he is one of the complainants herein; that he has read the foregoing bill and knows the contents thereof, and that the matters therein stated are true, according to the best of his knowledge, information and belief.

WM. P. CLYDE.

Subscribed and sworn to before me this June 15th, 1892.

Witness my hand and official seal.

WM. H. MASSON,
Notary Public.

And on the same day, to-wit: The following order was entered in this cause:

**ORDER APPOINTING FOSTER AND HUIDEKOPER
RECEIVERS.**

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

William P. Clyde and others	}	In Equity.
against		
Richmond and Danville Rail-		
road Company, The Rich-		
mond and West Point		
Terminal Railway and		
Warehouse Company.		

Upon reading and considering the verified bill in this cause, together with the exhibits and affidavits in support

thereof, and on motion of the counsel for complainants, it is ordered by the court that Frederic W. Huidekoper, of Washington, and Reuben Foster, of Baltimore, be, and they are hereby, appointed receivers of this court of all and singular, the property and assets of the Richmond and Danville Railroad Company, as described in the foregoing bill of complaint, the same being the system of railways now in the possession of and owned and operated or controlled by the said corporation, situate in the District of Columbia, and in the States of Virginia, North and South Carolina, Georgia, Alabama and Mississippi, together with all the equipment, shops, appurtenances of every kind, machinery, material and supplies now owned, held or in the possession and use of such corporation, and wherever situate including all tracks, terminal facilities, real estate, warehouses, offices, stations and all other buildings of every kind, owned, held or possessed by said railroad company, together with all steamers, wharves and other properties held in connection therewith, and all moneys, choses in action, credits, bonds, stocks, leasehold interests or operating contracts, and other assets of every kind, and all other property, real, personal and mixed, owned, held or possessed by said railroad company.

To have and to hold the same, as the officers of, and under the orders and directions of, the court.

The said receivers are hereby fully authorized and directed to take immediate possession of all and singular, the property above described, wherever situated or found, and continue the operation of said railroad system and steamer lines, and conduct systematically in the same manner as at present, the business and occupation of common carrier of passenger and freight, and discharge all of the public duties obligatory upon either the said Richmond and Danville Railroad Company, or upon any of the other corporations whose lines of road are now in the possession of and operated by said last named company.

Each and every of the officers, directors, agents and employes of the said Richmond and Danville Railroad Company are hereby required and commanded forthwith, upon demand, of the said receivers, or their duly authorized agent, to turn over and deliver to such receivers, or their duly constituted representative, any and all books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys or other property in his or their hands or under his or their control; and each and every of such directors, officers, agents and employes are hereby commanded and required to obey and conform to such orders as may be given to them from time to time by the

said receivers, or their duly constituted representatives, in conducting the operation of the said property, and in discharging their duties as receivers, and each and every of such officers, directors, agents and employes of the said Richmond and Danville Railroad Company are hereby enjoined from interfering in any way with the possession or management of any part of the property over which the receivers are hereby appointed, or interfering in any way to prevent the discharge of their duties, or operating the same under the court's orders.

Said receivers are hereby fully authorized to operate the said system of railways and steamer lines and manage all the other property of such corporation at their discretion, and in such manner as will, in their judgment, produce the most satisfactory results consistent with the discharge of the public duties imposed thereon, and to collect and receive all the income therefrom, and all debts due such company of all kinds, and for such purpose, are hereby vested with full power, at their discretion, to employ and discharge, and fix the compensation of all such officers, attorneys, managers, superintendents, agents and employes, as they may deem for the best interests of said property and the proper discharge of their trust, with the approval of one of the judges of this court.

The said receivers are directed to deposit the earnings coming into their hands in some banks in Richmond, Washington and New York City, and report to the court for approval what banks they have selected.

They are also hereby fully authorized and empowered to institute and prosecute all such suits as may be necessary, in their judgment, for the proper protection of the property and trusts hereby vested in them; and to likewise defend all such actions instituted against them as such receivers; and also to appear in and conduct the prosecution or defence of any suits now pending in any court against the said Danville Company, the prosecution or defence of which will, in the judgment of said receivers, be necessary for the proper protection of the property placed in their charge for the interests and rights of creditors connected therewith.

The said receivers shall, from time to time, out of the funds coming into their hands from the operation of the property, pay the expense of operating the same and executing their trusts, and all taxes and assessments upon the said property or any part thereof, and also pay and discharge all such traffic and car mileage balances as may be due to connecting and other railways, and all such loss and damage claims arising from the previous operation of

of said property as, in their judgment, on examination, are proper to be paid as expenses of operation ; and shall also, out of the moneys coming into their hands, pay and discharge all the current and unpaid pay-rolls and vouchers, and supply accounts incurred in the operations of said railroad system, at any time within six months prior hereto.

The said receivers are hereby required to open proper books of account, wherein shall be stated the earnings, expenses, receipts and disbursements of their said trust, and preserve proper vouchers for all payments by them made on account thereof, and to file in this court monthly statements of their receipts and disbursements.

The said receivers shall be at liberty from time to time to make application to the court for such further order or direction as to the operation of said property in their charge, or the performance of their duties in connection therewith, as in their judgment may be necessary. Each of said receivers are hereby further required, within ten days from this date, to file with the clerk of this court, a proper bond, with sureties to be approved by this court, in the penal sum of one hundred thousand dollars conditioned for the proper discharge of their duties, and to account for all funds coming into their hands according to the orders of this court.

The court orders that this case is set down for hearing at Richmond, Virginia, on August 16, 1892, on a motion to appoint permanent receivers herein, and the defendants have leave at such time to move to dissolve the injunction granted herein upon ten days' written notice to complainants' solicitors to that effect.

HUGH L. BOND,
Circuit Court.

June 15, 1892.

And on another day, to-wit : On the 28th day of June, 1892, came the complainants, William P. Clyde and others, and filed their petition for issue of receivers' certificates and payment of coupons. Said petition is in the words and figures following, to-wit :

**PETITION FOR ISSUE OF RECEIVERS' CERTIFICATES AND
PAYMENT OF COUPONS.**

William P. Clyde and others
vs.
Richmond & Danville R. R. Co. and others. }

To the Hon. Judges of said Court :

Your petitioners, William P. Clyde, John C. Maben

and William H. Goadby, respectfully show that, on June 15th, 1892, as creditors and bondholders of the Richmond & Danville Railroad Company, they filed a bill of complaint in this court in behalf of themselves and all other creditors of such corporation, and that, upon consideration thereof, this court entered its decree, appointing Frederic W. Huidekoper and Reuben Foster receivers of such corporation, with directions to take immediate possession of all and singular the railroad system and assets belonging to it, and to operate and manage the same, and receive and disburse the income thereof subject, to the orders of the court.

On June 16, 1892, the said receivers entered into full and exclusive possession of all and singular such railroad and property, and have ever since been managing the same under their order of appointment. On June 16th and 17th auxilliary suits were instituted by your petitioners against said Railroad Company in the Circuit Courts of the United States for the Western District of North Carolina, the District of South Carolina, the Northern District of Georgia, the Northern District of Alabama and the Northern District of Mississippi, and orders were duly entered of record by each of said courts confirming the original appointment of receivers by this court in the said several jurisdictions, and recognizing this court as having primary jurisdiction over all the railroad system and property of the said Richmond & Danville Railroad Company wherever situate.

Thereupon your petitioners show that :

First. It fully appears by the books of account kept by said company, and from the examination and reports of the several officers of the receivers that, when they assumed possession and control of the railroad system, it was indebted in the sum of about one million dollars for supplies and material purchased and used by the said railroad company in conducting the operations of its roads during the six months immediately prior to the appointment of receivers. Such indebtedness is for wood, coal, oil, ties, timber, shop and train supplies, and all the many articles which are necessary for the operation of the road. The creditors holding such claims are very numerous, and are scattered through the six States in which the railroad system is situated, and many of them are very clamorous for their money, because it has been constantly promised them for some months, and its non-payment greatly cripples their business. Constant demands are being now made upon the receivers' agents along the system for the payment of such voucher and

supply debts, and your petitioners are informed that the non-payment of such claims is injuring the credit of the property and seriously injuring its traffic. All such indebtedness is of the class which by the order appointing receivers was directed to be paid "from time to time out of the funds coming into the receivers' hands from the operation of the property," and, as your petitioners are advised, constitutes, according to equity and the rules and practice of the court, a preferential debt, which is a charge upon the income of the railroad next after the expenses of the receivership, and is entitled to priority of payment before any interest upon any of the mortgage debt of said defendant corporation.

Second. Your petitioners show that, as stated in the bill, the Richmond and Danville Railroad is only 152 miles long, while it holds and operates under lease and contract 3,168 miles of road owned by divers other companies, which, while separately chartered, built, mortgaged and leased, have been, for several years, held and operated as one system, and one of the chief ingredients of its value and income producing power is the unity of the property as now maintained.

On July 1st, 1892, an interest instalment falls due upon the 6 per cent. consolidated bonds issued by the Danville Company itself, amounting to \$179,710.00.

Interest is also due at the same time upon several of the leased and operated roads of the system, as follows:

Atlanta and Charlotte Air Line,		\$148,750
North Carolina Railroad,	rental,	130,000
Rich., York River and Chesapeake,	stock,	14,925
" " " "	bonds,	16,000
West. North Car. 1st Consol. Bonds,		74,250
Charlotteville and Rapidan,	rental,	18,000
Franklin and Pittsylvania,	"	3,500
C., C. and A. 1st Mortg.,	bonds,	70,000
" " " 1st Consol.	"	15,000
Chester and Lenoir	"	9,125
Chevan and Chester	"	3,500
Columbia and Greenville	"	60,000
Spartanburg, U. and Columbia	rental,	25,000
Georgia Pacific 1st Mort.	bond,	169,800
Roswell Railroad	"	1,127

Making a total of \$938,687, which falls due for interest on said July 1st next.

In many of the lease and operating contracts under which the Danville Company held, and the receivers are

now operating these different roads, there are provisions for the forfeiture of the leasehold estate and re-entry in case of default in payment of the instalments of guaranteed interest or rental.

Third. Besides the system of railroads in the present custody of the court's officers, they were also appointed receivers of all the choses in action, credits, bonds, stocks, leasehold interests and operating contracts and all other assets of the Danville Company.

The said receivers are in the present enjoyment of all the leasehold interests and operating contracts of the several separate lines of roads upon which interest or rental will mature on July 1st next.

At the date of the appointment of such receivers, the Danville Company was the owner of bonds and stocks of different companies composing parts of its system amounting, at par value, to about \$10,000,000, but the main and most valuable portion of such securities had been before that time, in connection with securities of the Terminal Company, pledged with divers banks and trust companies in New York and elsewhere upon the negotiable, call and time paper of said Danville Company, amounting to about four million four hundred thousand (\$4,400,000.00) dollars.

Your petitioners aver that there is a large surplus between the real value of the said pledged securities and the debt for which they stand charged, and the proper officers of the Danville Company have executed a written assignment to the receivers of the court, vesting in the latter the legal title to all such pledged securities, and that they now constitute a valuable portion of the trust estate, and are entitled to such judicial protection as consistently with equity the court can award.

Fourth. Your petitioners are advised, and believe, and therefore so aver, that the prospective earnings in the receivers' charge will not, during the next six or eight months, be sufficient to pay the necessary current expenses of operation, taxes, car trusts, rentals and proper repairs and renewals, and also the past due material and supply debt and the interest instalments falling due, from time to time, on and after July 1st next, upon the different mortgage bonds of the Danville Company, and its rental obligations in its leases of other lines.

Your petitioners show that, if the net income of the receivership, after its own current operating obligations are paid, should be ordered by the court to be used wholly to the liquidation of the ante-receivership voucher and supply

debt, to the exclusion of all payment of interest upon the mortgage bonds of the Danville Company and its several rental obligations, that such course will inevitably result in defaults upon all the many separate leases, and each and every of the fifty-nine different classes of mortgage securities resting upon such leased and operated properties, and thereupon the several class of creditors secured by such several sections of roads will take advantage of such default, and in this and other courts having jurisdiction of the receivership, will bring many separate actions for re-entry or sequestration of their several roads, and also for the forfeiture of the principal of their bonds, and the foreclosure of their respective mortgages, and the separate sale of the several parts of the system, and many of the junior securities would be wholly obliterated, or realize but a small fraction of their claims.

Such course will also inevitably result in a large depreciation of the market value of the \$10,096,300.00 of bonds and stocks owned by the receivership and the Terminal Company, and pledged as aforesaid, so that the pledgees thereof who are at present willing to extend credit and carry the loans will, in consequence of the shrinkage in the price of their collateral, demand payment of their claims, and proceed to sell out the pledged securities for the best price to be obtained.

Your petitioners charge that such a course will result in a loss to the receivership trust far exceeding the entire past due voucher and supply indebtedness.

Fifth. Your petitioners submit to the court that it is for the best interests of everyone interested in the trust estate now in the court's charge that the preferential debt should be at once capitalized and the voucher creditors be paid in cash and the current net income of the receivership be used to pay bond interest and rental obligations, so as to preserve the system of roads against dismemberment, prevent a multitude of defaults and claims for re-entry and foreclosure, as well as to preserve and increase the present market value of the bonds and stocks belonging to the receivership.

Sixth. Your petitioners, therefore, pray that, upon such terms and restrictions as to the court may seem proper, the receivers be authorized to execute and sell an issue of receivers' certificates not exceeding one million dollars, payable at such time as the court may direct, bearing interest at a rate not exceeding six per cent. per annum, payable semi-annually, which shall be a first lien upon the Richmond and Danville Railroad, and its property, lease-

hold interests, contracts and income, and, out of the proceeds, as a special fund, to pay and discharge all outstanding indebtedness of the Danville Company incurred for material and supplies in the operation of the roads in the receivers' hands, which were purchased within six months prior to June 15, 1892, as the said indebtedness shall be ascertained and reported on by special masters to be appointed for such purpose.

And also that out of the funds coming into their hands from the operations of the roads, which can safely be used without prejudice to their own current liabilities, for operating expenses, the receivers be authorized to pay the instalments of rent and coupons of mortgage bonds resting upon the several parts of the system, so as to protect and preserve the present unity of the system of roads in their charge.

Your petitioners are large owners of different classes of bonds secured by mortgages on the Danville Road and other parts of its system; they also represent and are authorized to speak for other parties holding several millions of such bonds, and they aver that, so far as they have ascertained the sentiments of bondholders, they are unanimously in favor of the policy of funding the preferential supply debt into receivers' certificates and protecting the entirety of the system of operated roads by continuing the payment of interest on bonds and all rental obligations.

They have also caused proper investigation to be made and verily believe that such receivers' certificates could be sold at par and that the receivers' available income will be sufficient to enable them, if thus relieved for a time of paying the ante-receivership voucher debts, to continue the payment of such mortgage interest and rental, and that such policy will considerably strengthen the credit of the receivership along the line, prevent much litigation and cost, will increase the earnings of the roads and also the market value of the several millions of bonds and stocks owned by the receivership.

Your petitioners show that there are five mortgage liens upon the property of the Richmond & Danville Railroad Company, as follows:

One dated October	5, 1874, for	\$5,997,000
" " February	1, 1882, "	3,368,000
" " October	22, 1886, "	4,498,000
" " September	3, 1889, "	1,390,000
" " May	1, 1891, "	883,000

Printed copies of such mortgages are made part hereof as Exhibits 1, 2, 3, 4 and 5. The said mortgage of Octo-

ber 22, 1886, is the only one which covers both the railroad equipment and all leasehold estates and operating contracts. The Central Trust Company is the trustee in each and all of the trust deeds or mortgages, and it is made a party hereto, so that it can appear to the application and be heard upon the question of issuing receivers' certificates and authorizing the payment of mortgage interest and rental obligations out of the current net income of the receivership.

And your petitioners will ever pray.

WM. P. CLYDE,
JOHN C. MABEN,
WILLIAM H. GOADBY.

HENRY CRAWFORD,
FRANK P. CLARK,
Solicitors.

STATE, COUNTY AND CITY OF NEW YORK.

William P. Clydè, John C. Maben and William H. Goadby, being duly sworn, each on oath, says that he has read the foregoing petition by him subscribed, and that the matters therein set forth are true according to the best of his knowledge, information and belief.

WM. P. CLYDE,
JOHN C. MABEN,
WILLIAM H. GOADBY.

Sworn to before me June 27th, 1892.

JAMES J. MURPHY,
Notary Public, Kings County.
Cert. filed in N. Y. Co.

The exhibits filed with the foregoing petition and numbered, respectively, 1, 2, 3, 4 and 5, are respectively as follows, to-wit:

EXHIBIT I.

This deed, made this fifth day of October, in the year one thousand eight hundred and seventy-four (1874), between the Richmond and Danville Railroad Company, a corporation chartered by the State of Virginia, party of the first part, and Isaac Davenport, Jr., of the city of Richmond, Virginia, and George B. Roberts, of the city of

Philadelphia, Pennsylvania, trustees, parties of the second part, witnesseth, that

Whereas, at a meeting of the Board of Directors of the said Richmond and Danville Railroad Company, held on the fourth day of September, one thousand eight hundred and seventy-four (1874), it was

Resolved, That for the purpose of providing for all obligations and indebtedness of this company, and for its other lawful uses and purposes, this company do make, execute and deliver to Isaac Davenport, Jr., and George B. Roberts, and their successors in trust, a deed of trust or mortgage, in which shall be conveyed the railroad and works of the company, its franchises and corporate rights, together with such other of its property as shall be more particularly mentioned and described in said deed, to secure the full and final payment of the bonds of this company to be issued thereunder, to an amount not exceeding the sum of six million dollars (\$6,000,000), as hereinafter recited and provided. The said bonds to be of the denomination either of one thousand dollars (\$1,000), five hundred dollars (\$500), or one hundred dollars (\$100) each, or partly of any or of each of said denominations, and bearing interest at the rate of six per centum per annum, payable half-yearly, in gold coin of the United States of America, to be numbered as follows: Bonds of the denomination of one thousand dollars (\$1,000), to be numbered from number one (1) consecutively; bonds of the denomination of five hundred dollars (\$500) to be numbered from number 6001 consecutively; bonds of the denomination of one hundred dollars (\$100) to be numbered from number 18,001 consecutively, and to be of such form, tenor and effect in all other respects as this company may, by their Board of Directors, determine or authorize, at or before the time of the issue thereof respectively; and that each of said bonds, for five hundred dollars and one hundred dollars, shall contain a provision, either in the body thereof or by endorsement, which will entitle the holder, when he shall present the same in sums of one thousand dollars, with current coupons attached, to have the same converted, at his option, into a bond of one thousand dollars; and which deed of trust or mortgage shall be for the benefit and in security of and in trust for the holders of the said bonds, without preference, priority or distinction as to lien or otherwise of any one over another, and so that each and all of the said bonds to be issued as aforesaid shall have the same right, lien and privilege of the said deed, and shall be equally secured thereby with like effect as though they had all been made,

executed and delivered on the day of the date of the deed given to secure the same.

Resolved, That the president be, and he is hereby authorized and directed, for and in behalf of this company and for and as their act and deed, to affix their corporate seal to the said deed of trust or mortgage, and to sign the same as such president, and when executed to acknowledge, deliver and cause the same to be duly recorded.

Resolved, That the said bonds to the amount not exceeding six million dollars (\$6,000,000), and which are intended to be secured by the said deed, shall from time to time hereafter be made, executed and issued when and as authorized by resolutions of the Board of Directors, and to be numbered and of the denomination, form, tenor and effect as aforesaid.

Resolved, That the following form of certificate be placed upon each of the said bonds, viz.: "This bond is one of those secured by a deed of trust or mortgage of the Richmond and Danville Railroad Company (duly recorded), dated the fifth day of October, in the year one thousand eight hundred and seventy-four (1874), duly authorized, executed and delivered by the said company to Isaac Davenport, Jr., and George B. Roberts, the trustees therein named, and their successors, of the railroad, estate, real and personal, and corporate rights and franchises therein mentioned, to secure the bonds of the said company therein set forth.

Trustees."

And it shall be the duty of the trustees or their successors or successor, and they are hereby instructed and required from time to time, as often as the said bonds, secured as aforesaid, are issued (of which intended issue the president of this company is hereby directed to notify the said trustees or their successors or successor), to affix their respective signatures to the said certificate on each of the said bonds; and that without such certificate said bonds shall not be issued. And

Whereas, there are outstanding bonds and obligations of this company, to-wit:

The bonds or obligations guaranteed by the State of Virginia, amounting to the sum of one hundred and fifty-seven thousand eight hundred dollars (\$157,800), secured by deed of trust on the railroad, property and franchises of this company, dated the sixteenth day of December, one thousand eight hundred and fifty (1850), and which will become due and payable at various dates prior to the first day of November, one thousand eight hundred and seventy-six (1876).

Also, the bonds or obligations, amounting to the sum of thirty-four thousand six hundred dollars (\$34,600), secured by a deed of trust on the railroad, property and franchises of this company, dated the first day of June, one thousand eight hundred and sixty-three (1863), which bonds will become due and payable at various dates prior to the first day of November, one thousand eight hundred and seventy-five (1875).

Also, the bonds or obligations, amounting to the sum of one million seven hundred and sixty-nine thousand two hundred dollars (\$1,769,200), secured by a deed of trust of this company, dated the eighteenth day of June, one thousand eight hundred and sixty-seven (1867), which said bonds will become due and payable as follows, to-wit: Two hundred and twenty-two thousand two hundred dollars (\$222,200), on the first day of May, one thousand eight hundred and seventy-five (1875); three hundred and sixteen thousand four hundred dollars (\$316,400), on the first day of May, one thousand eight hundred and eighty (1880); six hundred and seventeen thousand nine hundred dollars (\$617,990), on the first day of May, one thousand eight hundred and eighty-five; six hundred and twelve thousand seven hundred dollars (\$612,700), on the first day of May, one thousand eight hundred and ninety (1890).

Also, the balance due to the State of Virginia on account of a loan of six hundred thousand dollars, made to this company pursuant to the Act of the General Assembly of Virginia, passed the ninth day of February, one thousand eight hundred and fifty-three (1853), and secured by like deed of trust or mortgage made to the Board of Public Works, bearing date the nineteenth day of March, one thousand eight hundred and fifty-three (1853), on which said loan sundry payments have been made, reducing the same to an amount not exceeding five hundred thousand dollars (\$500,000): Therefore, be it further

Resolved, That there shall be reserved of the said bonds for the sum of six million dollars the amount of two million four hundred and sixty-one thousand six hundred dollars (\$2,461,600), part thereof, that being the aggregate amount of the aforesaid outstanding bonds and obligations, which sum of two million four hundred and sixty-one thousand six hundred dollars (\$2,461,600) of bonds shall not be issued until and as the same amount of said bonds and obligations shall be paid off and satisfied by this company; and said bonds, so reserved as aforesaid, shall not be perfected and made ready for delivery until such payment or satisfaction shall have been made; but whenever the said company shall pay or satisfy any portion of said bonds or

obligations, an equal amount of said bonds so reserved shall be perfected and delivered to said company for their uses.

And whereas, by the contract of lease of the Piedmont Railroad and property by this company, bearing date the day of September, A. D. one thousand eight hundred and seventy-four (1874), it is provided as follows :

"And whereas, there is a deed of trust upon the property and works of the said Piedmont Railroad Company, which was executed to secure certain bonds of the said company now outstanding, and which will mature before the termination of this lease ; and whereas, if any sale should be made under said deed, this lease would be thereby terminated, in order to provide, as far as practicable, against such a contingency, the Richmond and Danville Railroad Company doth hereby promise the said Piedmont Railroad Company, and doth undertake to purchase the said bonds of the Piedmont Railroad Company, and hold the same, still secured, however, by the deed aforesaid, as long as the said Richmond and Danville Railroad Company finds it practicable and expedient so to do, without requiring any sale under said deed, so that this lease may be continued beyond the maturity of said bonds, and thereafter as hereinbefore provided," which said outstanding bonds of the Piedmont Railroad Company amount to the sum of five hundred thousand dollars : Therefore, be it further

Resolved, That out of the six millions of dollars of bonds to be issued by this company, there shall be reserved bonds to the amount of five hundred thousand dollars, being the aggregate amount of the said outstanding bonds and obligations of the said Piedmont Railroad Company, which amount of bonds, so reserved as aforesaid, shall not be perfected and issued, except as hereinafter provided ; that is to say, whenever any of said bonds of the Piedmont Railroad Company shall be purchased as aforesaid, the president of this company shall endorse upon each of said bonds, so purchased, the following words :

"This bond constitutes a part of the trust fund of the Richmond and Danville Railroad Company, created by the deed of trust or mortgage, dated the fifth day of October, A. D. one thousand eight hundred and seventy-four (1874), to Isaac Davenport, Jr., and George B. Roberts, trustees," and sign the same.

And whenever any of said bonds, with such endorsement thereon, shall be exhibited to the said trustees, they shall sign and deliver to this company a like amount of the bonds reserved as aforesaid, to be used or disposed of by this company for any of their purposes. But is dis-

tinely understood and agreed, that this company shall and may, at any time, if deemed judicious by their board of directors so to do, cancel said bonds and release, and cause to be released the deed of trust securing the same, and it was also

Resolved, That the compensation of the said trustees, or their successors or successor in the trust, shall be determined from time to time by the board of directors of this company: provided, that such compensation shall not exceed for any one year the sum of two hundred and fifty dollars for each trustee, and that the acceptance of the trust created by said deed by the said trustees, or their successors or successor, shall be deemed and taken to be on the terms and conditions therein expressed.

Resolved, That the form of deed, a copy of which is hereto annexed, is approved and adopted by the board, and this present form of deed is the form so adopted.

Now, therefore, this deed further witnesseth, that, in consideration of the premises and of the sum of ten dollars to the said party of the first part by the parties of the second part, paid before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said party of the first part do, in accordance with the above-recited resolutions of the board of directors of said company, grant, convey, transfer and assign, with general warranty, to the said parties of the second part, their survivors and successors, the following property, to-wit:

The entire railway of said company, extending from and including the depot lot between Virginia and Fourteenth streets, in the city of Richmond, to the town of Danville, Virginia, and all its lateral roads or branches, the principal of which are the Coalfield branches, the James River branch, the Belle Isle and Tredegar branch, and the Rocketts branch, with all the lands attached and belonging to said railway and branches, and used in connection therewith, including all depot lots, depots, wharves, docks, warehouses, machine-shops, bridges, and all other structures and their appurtenances, together with all the said company's engines, cars, rolling stock, equipment, machinery, implements, and materials, including all engines and cars of the said Richmond and Danville Railroad Company now in use on the Atlanta and Richmond Air-Line Railway, and all other property, works, and effects of the said Richmond and Danville Railroad Company, appertaining to or used in connection with the said railway and branches or in operating the same, wherever the same may be situated, or in whatever manner the same may be held, including also all property and effects so pertaining to and to be used in

connection with said railway and in operating the same, which the said company may hereafter at any time acquire ;

Also, All the leasehold of the said parties of the first part in the North Carolina Railroad, and the property, real and personal, used in connection therewith and in operating the same, together with all the appurtenances of every sort thereunto belonging, which were conveyed to said party of the first part by the North Carolina Railroad Company, by deed bearing date the eleventh day of September, one thousand eight hundred and seventy-one (1871), and duly recorded in the county of Alamance, in the State of North Carolina, to which deed reference is made for greater certainty ;

Also, all the right, title and interest of the said party of the first part in and to the Piedmont Railroad, and all the works and other property belonging to the Piedmont Railroad Company, and used in connection with the said railroad in operating the same, which interest is as follows, to-wit : fourteen thousand eight hundred and ninety shares in the capital stock of the said Piedmont Railroad Company, the whole of said capital stock being fifteen thousand (15,000) shares, and upon the scrip for which shall be endorsed the following : " This capital stock is subject to the lien of the mortgage of the Richmond and Danville Railroad Company, dated fifth day of October, one thousand eight hundred and seventy-four (1874), to Isaac Davenport, Jr., and George B. Roberts, trustees," to be signed by the president of said Richmond and Danville Railroad Company under their corporate seal, and deposited with the said trustees until a merger shall be made as hereinafter mentioned), and the leasehold of said railroad and its works, property, &c., for and during the term of eighty-six years from and after the twentieth day of February, one thousand eight hundred and seventy-four (1874), all of which will more clearly appear by reference to the deed of lease executed by said Piedmont Railroad Company to the party of the first part, bearing date the fourteenth day of September, one thousand eight hundred and seventy-four (1874), and of record in the county of Guilford, in the State of North Carolina.

Also, all bonds of the Piedmont Railroad Company, which may hereafter be purchased by the said party of the first part, and which may be endorsed in the manner provided for by the resolution of the Board of Directors in relation thereto, and hereinbefore set forth, subject, however, to the right of the said party of the first part to cancel said

bonds, under the circumstances and in the manner set forth in said resolution.

Also, all the right, title and interest of the said party of the first part in and to the line of connecting railway extending from the depot of the party of the first part in the city of Richmond to the depot of the Richmond, York River and Chesapeake Railroad Company in said city, subject to an agreement in writing made with the said last mentioned company, in respect to the use and operation of the said railroad; but it is not designed hereby to convey a certain lot of ground, with a brick tenement thereon, belonging to the said party of the first part, situated on Dock street, on the line of said connecting railway, known as the Palmer lot, the same not being used in connection therewith, and which said lot is hereby expressly excepted from the lien and operation of this deed.

Also, the annually accruing net income of the said party of the first part;

To have and to hold all the said property, real and personal, hereinbefore granted, together with all the rights, privileges and appurtenances thereto belonging, unto the parties of the second part hereto, the survivor of them and their successors, as hereinafter mentioned, their and each of their heirs, executors and administrators, to and for their only use and behoof, in trust, nevertheless, for the use, benefit and security, as hereinafter mentioned, of the several persons and bodies corporate, their respective executors, administrators, successors and assigns, who shall be or become holders of said bonds, or any of them, without any preference, priority or distinction whatsoever to any holder of any of the said bonds; but subject, nevertheless, to the right of the party of the first part, and their successors and assigns, to retain the free and uncontrolled use, enjoyment, possession and management of the aforesaid premises, property and income hereby granted and intended so to be, until the said parties of the second part are authorized to enter upon or sell the same, as hereinafter set forth; and it is understood and agreed that the said party of the first part, in exercising the right to the uncontrolled use, enjoyment, possession and management of the aforesaid premises, property and income, may renew, replace and repair all and every part of said premises and property, and apply and appropriate the issues, income and profits thereof to the payment of the current expenses of maintaining and operating their road and to the purchase of necessary materials, machinery and equipment therefor, and the Board of Directors may distribute and pay to the stockholders any net annual income, after providing for

the interest of any and all bonds which the party of the first part may owe.

And it is hereby expressly covenanted and agreed by and between the parties hereto (the said party of the first part covenanting as well for themselves as for their successors and assigns, and the said parties of the second part covenanting as well for themselves as for their successors or successor in the trust) in manner following, viz. :

First. That they, the party of the first part, their successors or assigns, shall and will punctually pay the holders of the aforesaid bonds, intended to be hereby secured, the interest thereon semi-annually, as the same shall become due and payable, according to the terms in said bonds contained, and on the days therein respectively mentioned for the payment of the same; and shall and will, also, on the days and times mentioned in the said bonds respectively, or whenever the said principal sums of the said bonds shall, according to the provisions thereof, become due and payable, fully pay and satisfy the same, both principal and interest, according to the terms thereof.

Second. That if the party of the first part hereto, their successors or assigns, shall at any time hereafter, after demand, make default, or refuse, neglect, or omit, for any period exceeding six months after the same shall become due and payable, to pay the semi-annual interest on the bonds hereby intended to be secured, or any of them, or shall, after demand, make default, or refuse, neglect, or omit, for any period exceeding twelve months after the same shall become due and payable, to pay the principal sum of each and all of the said bonds intended to be hereby secured, the said trustees or trustee for the time being shall and will, upon the written request of the holders of one-fourth in amount of the said bonds outstanding, and upon which such default, refusal, neglect, or omission to pay the said interest or principal shall have been made or shall have occurred, enter upon and take possession of the railroads, estate—real and personal—and premises hereby conveyed, or agreed or intended so to be, and shall and will thereupon, by themselves or by such agents as they may appoint, operate, manage, control, and use the said railroads, estate—real and personal—and premises (possession of which may be so taken) to the best advantage, and appropriate the net income and proceeds to be derived therefrom (after deducting the expenses of this trust and such sum or sums as may be sufficient to indemnify the trustees or trustee for the time being against any liability, loss, or damage for or on account of any matter

or thing to be done by them or him in good faith in the performance of their or his duty as trustees or trustee) to the payment in full, without any preference, priority, or distinction of one bond over another, firstly, of the interest due on, and, secondly, of the principal of all of the aforesaid bonds then outstanding and intended to be hereby secured, in full, if the said income and proceeds be sufficient, but if not, then *pro rata*; or the said trustees or trustee shall and will, after or without entering upon or taking such possession, upon the written request of the holders of a like amount of the said bonds then outstanding, and upon which default has been made as aforesaid, proceed to sell the railroads, estate, real and personal, corporate rights, and franchises and premises hereby conveyed, or agreed or intended so to be, to the highest and best bidder, at public sale in the city of Richmond, Virginia, (after having first given at least three months' notice of such intended sale by publication, to be made twice in each week in at least two daily newspapers published in each of the said cities of Richmond, Virginia; Baltimore, Maryland; Philadelphia, Pennsylvania, and New York,) and grant and convey the same to the purchaser or purchasers thereof freed from all and every the trusts hereby created, and without any liability on the part of such purchaser or purchasers to see to the application of the purchase-money; and shall and will appropriate the purchase-money, after deducting therefrom the expenses of the trust and indemnity to the trustees or trustee as aforesaid, to the payment as aforesaid, firstly, of the interest due on, and secondly, of the principal of the said outstanding bonds, in full, if the said purchase-money be sufficient, or if not, then *pro rata*; and in the event of there being in the hands of the said trustees or trustee any portion of the trust estate or the proceeds thereof, after the payment in full of the principal and interest of the aforesaid bonds, then the said trustees or trustee shall reconvey, re-transfer, or pay over the same to the party of the first part, their successors or assigns, for their sole use and benefit; it being distinctly understood and agreed that, in the event of any such entry upon or taking possession of the railroads, estate, real and personal, and premises hereby conveyed, or agreed or intended so to be, or in the event of any sale thereof by the said trustees or trustee for the time being, as hereinbefore mentioned, then, and in either such case, the whole principal sum of each and all of the bonds then outstanding and intended to be hereby secured shall forthwith become due and payable, notwithstanding the same may, by the terms of the said bonds, be payable at other

times; provided, however, that if the interest, as to which there may have been such default and demand as aforesaid, shall be fully paid at any time before the day appointed by the trustees or trustee for such sale, then, and in that event, said bonds shall not forthwith become due and payable as aforesaid, and no such sale shall be made unless the principal of said bonds shall have become due and payable, according to the tenor and effect thereof, and default in the payment of the principal of such bonds and demand therefor, as aforesaid, shall have been made and continued; and if after the said trustees or trustee shall take possession of said property for default of payment of interest as aforesaid, all arrearages of such interest shall be paid either out of the net income received by them or otherwise, the said trustees or trustee shall and will restore the said property to the said party of the first part; and in every case of such default in the payment of interest as aforesaid for the period of six months, then in like manner and upon like terms the said trustees or trustee shall and will proceed to take possession of said property, and use or dispose of the same as hereinbefore provided, and in like manner and on like terms shall and will restore the same.

Third. That the party of the first part shall and will, from time to time hereafter, upon the demand of the said trustees or trustee for the time being, grant, convey, assure, assign, transfer, and set over unto the said trustees or trustee for the time being, all real and personal estate, corporate rights and franchises which they, the party of the first part, shall hereafter in any way or manner acquire, either as appurtenant to, or for the use upon, or for the business of, the said railroads, or any of them; and all the right, title and estate of the party of the first part of, in and to such of the leases of other railroads, and any property used in connection therewith, which the said party of the first part shall hereafter in any manner acquire and which their board of directors shall by resolution direct to be conveyed, assured, assigned, transferred and set over to the said trustees or trustee for the time being, and shall and will do, make, execute and deliver or cause to be done, made, executed and delivered, all and every other and further acts, deeds, conveyances and assurances in the law, for the better assuring, conveying and confirming unto the said trustees or trustee for the time being all and singular the estates, premises and property hereby conveyed, or intended so to be, or which are hereby covenanted and agreed to be hereafter conveyed to the said trustees or

trustee, or by their or his counsel learned in the law shall be desired or required for the better effecting and carrying out the provisions and purposes of this deed and securing the payment of the principal and interest of the bonds intended to be hereby secured; all which estates, premises and property shall be held by the said trustees or trustee for the time being in, under and upon the several and respective trusts, and for the use and purposes, and subject to the powers and authorities, in this deed mentioned and expressed.

Fourth. That it shall and may be lawful for the said party of the first part, their successors or assigns, by and with the consent and approval in writing of the said trustees or trustee for the time being, at any time or times hereafter, to sell for cash or on credit, or partly for cash and partly on credit, or to exchange any part or parts of the real estate and appurtenances hereby conveyed, not required for the continued and proper use and operation of the railroad of the said party of the first part, free and clear from the lien and operation of these presents, and to convey and assure the same, without liability on the part of the purchaser or grantee for the disposition made of the price paid or property received in exchange; provided, however, that the proceeds of any sale or sales shall, at the option of the said party of the first part, be invested by them, either in the improvement of any remaining part of the estate and property hereby conveyed, or in the purchase by the said party of the first part of other property, real or personal; which property so purchased, as well as any that may be acquired in exchange as aforesaid by the party of the first part, shall, upon the demand of the trustees or trustee for the time being, be conveyed in trust by the party of the first part to the said trustees or trustee, subject to all the trusts hereby declared, and also to the power of sale and exchange herein reserved; or the said proceeds of sale may be invested in the purchase of bonds hereby secured, which bonds, when purchased, shall be forthwith canceled and delivered to the said trustees or trustee.

Fifth. That it shall and may be lawful for the said party of the first part, their successors and assigns, by their board of directors, when, in the opinion of the said board, it may seem to be for the best interests and advantage of the party of the first part, to agree with the lessors, their successors and assigns, of the North Carolina Railroad and

of the Piedmont Railroad hereinbefore granted, to modify or change the terms and conditions thereof, or of either of them, or to annul said leases, or either of them, or by agreement as aforesaid with the Piedmont Railroad Company, to merge and consolidate the railroad, estates, real and personal, corporate rights and franchises of the said Piedmont Railroad Company, with the railroad, estates, real and personal, and corporate rights and franchises of the said party of the first part; in which event the estates and franchises so merged and consolidated shall be regarded as conveyed by this deed.

Sixth. That in the event of the death, resignation, neglect, refusal or incapacity to act of the trustees herein named, or either of them, or any successors or successor in the trust, then the party of the first part hereto shall have full power and authority to and will nominate a new trustee or trustees for the purpose of filling the vacancy so caused and supplying the place of such trustee so dying, resigning, neglecting, refusing or becoming incapable to act, such nomination and appointment to be made by instrument of writing, to be executed, acknowledged and recorded in the same manner as this present deed, and the acceptance of the trust by such new trustees or trustee to be endorsed upon and recorded with such instrument of writing; and the said trustee or trustees so nominated and appointed shall, upon his or their accepting the appointment, take upon himself or themselves the same trusts and have the same powers and be subject to all the stipulations and conditions of this deed, which trusts, powers, stipulations and conditions it is hereby agreed and declared shall extend to and be performed and executed by such newly-appointed trustee or trustees as they may or can or might or could be by the trustees named herein as parties of the second part, and the like nomination and appointment may and shall be made and carried into effect in like manner, from time to time, as often as there may be occasion therefor, and with the same effect as hereinbefore mentioned.

Seventh. And it is hereby further covenanted and agreed, and this trust is accepted upon the express condition, that the said trustees shall not, nor shall any future trustee or trustees, incur any liability or responsibility whatever in consequence of permitting or suffering the said party of the first part to retain or be in possession of the railroads, estates and entire premises hereby conveyed, or agreed or intended so to be, or any part thereof, and to

use, enjoy, sell, exchange, dispose of, or otherwise deal with the same, or any part of the same, as is hereinbefore expressly covenanted and agreed may be done, or permitted to be done, by the party of the first part; nor shall said trustees, or any future trustee or trustees, be or become responsible or liable for any destruction, deterioration, depreciation, determination, loss, injury or damage which may be done or occur to the railroads and estates and premises hereby conveyed or agreed or intended so to be, either by the said party of the first part or their agents or servants, or by any other person or persons whomsoever; nor shall any such trustees or trustee, present or future, be in any way responsible for the consequences of any breach on the part of the party of the first part, or of any of the covenants herein contained, nor for any act of the said party of the first part, their agents or servants; nor shall the said trustees or trustee, present or future, be or become liable or responsible for any cause, matter or thing, except their or his own wilful and intentional breaches of the trust herein expressed and contained: provided always, nevertheless, that if the party of the first part, their successors or assigns, shall and do well and truly pay, or caused to be paid, to the parties entitled thereto the full amount of all bonds issued under this deed, without sale, as aforesaid, then all the right, title and estate of the trustees under this deed shall be divested and made void, and the said Richmond and Danville Railroad Company, without any deed to that effect, shall be restored to all their rights of property, legal and equitable, as fully as if this deed had never been executed.

Witness the corporate seal of the Richmond and Danville Railroad Company, and the signature of the president of said company, and the signatures and seals of the said trustees.

THE RICHMOND & DANVILLE
RAILROAD CO.,

{ Seal. }

By A. S. BUFORD, President.

ISAAC DAVENPORT, JR. [Seal.]

G. B. ROBERTS. [Seal.]

Scaled and delivered in {
the presence of us: }

SAMUEL L. TAYLOR,

CITY AND CORPORATION OF RICHMOND, VA. } to-wit :

I, John A. Meanley, a notary public for the corporation aforesaid, in the State of Virginia, do certify, that Isaac Davenport, Jr., whose name is signed to the writing above, bearing date on the fifth day of October, one thousand eight hundred and seventy-four (1874), has acknowledged the same before me in my corporation aforesaid.

Given under my hand this twelfth day of November, Anno Domini one thousand eight hundred and seventy-four (1874).

JNO. A. MEANLEY, N. P.

STATE OF PENNSYLVANIA. }
County of Philadelphia, } to-wit :

I, Samuel L. Taylor, a commissioner appointed by the Governor of the State of Virginia for the said State of Pennsylvania, certify that George B. Roberts, whose name is signed to the writing above, bearing date on the 5th day of October, one thousand eight hundred and seventy-four (1874), has acknowledged the same before me in my State aforesaid.

Given under my hand this fourth day of November, Anno Domini one thousand eight hundred and seventy-four (1874).

[Seal.]

SAMUEL L. TAYLOR,
Commissioner for Virginia.

CITY OF RICHMOND } to-wit :

In the office of the Court of Chancery for the said city the ninth day of November, 1874, this deed was acknowledged in office by A. S. Buford, President, and on the nineteenth day of November, 1874, the tax imposed by law having been paid, the said deed, with the certificates annexed, was admitted to record at half-past ten o'clock A. M.

Teste :

BENJ. H. BERRY, Cl'k.

EXHIBIT 2.

This deed, made this first day of February, eighteen hundred and eighty-two, between the Richmond and Danville Railroad Company, a corporation created under the laws of the State of Virginia, party of the first part, and the Central Trust Company of New York, a corporation created under the laws of the State of New York, party of the second part :

Whereas, at a meeting of the stockholders of the Richmond and Danville Railroad Company, held according to law on the eighteenth day of January, eighteen hundred and eighty-two, the following preamble and resolutions were adopted :

“Whereas, at a meeting of the Board of Directors of the Richmond and West Point Terminal Railway and Warehouse Company, held on the 29th day of December, 1881, it was resolved to increase the capital stock of the said company from the sum of three million to five million dollars, and to give to the then existing stockholders of the said company the privilege of subscribing at par for the new stock in the proportion of two-thirds of a share of the new stock to one share of the old stock, and it is very desirable that this company, which has always held a majority of the stock of the said Richmond and West Point Terminal Railway and Warehouse Company, should accept the said privilege, both because of the great intrinsic value of the said stock and because it is necessary to the interests of this company that it should continue to hold a majority of the stock of the said Terminal Company :

Now, therefore, be it resolved—

First. That the president of this company is authorized to subscribe, on behalf of this company, for ten thousand shares of the new stock of the Richmond and West Point Terminal Railway and Warehouse Company.

Second. That in order to pay for the said stock, and for the purpose of retiring and extinguishing the floating debt of this company, the President and Board of Directors are hereby authorized to issue dibenture bonds to the amount of four million dollars, payable forty-five (45) years after date, bearing interest at the rate of six (6) per centum per annum, payable semi-annually out of the net earnings of the company.

The said bonds shall be of such form and contain such provisions as may be approved by the Board of Directors,

and shall be secured by a deed of trust, or mortgage, conveying the entire property, franchises, tolls and revenues of the Richmond and Danville Railroad Company for that purpose.

Third. The privilege of purchasing the said bonds at forty-five (45) cents on the dollar shall be extended to the stockholders of this company, who shall be recorded on the books of the company as owners of stock on the 10th day of February, 1882.

That is to say, every person who shall be the owner of ten (10) shares of the stock of this company on the 10th day of February, 1882, shall be entitled to purchase a thousand-dollar debenture bond at the price of four hundred and fifty dollars (\$450). The owners, as of that date, of a smaller amount of stock than ten shares may purchase, at the same price, a certificate stating on its face that the holder thereof is entitled to a part of a thousand-dollar bond, bearing such proportion to the sum of one thousand dollars as the par value of his stock bears to the sum of one thousand dollars (\$1,000). The said certificates shall be funded, when presented in sums of one thousand dollars (\$1,000), in bonds of that amount. The said certificates shall not bear interest, nor shall any be paid thereon, except from the time when they are funded. When funded, the bonds issued in lieu thereof shall have attached the current coupon, but no coupon for arrearages of interest.

Fourth. The books of the company shall be closed at 4 P. M. on the 10th day of February, 1882, and shall remain closed until 10 A. M. on the 16th day of February, 1882.

Fifth. The said bonds shall be paid for as follows, viz. :

Ten (10) per cent. of the price thereof shall be paid in cash on or before the 15th day of February, 1882, at the office of the Central Trust Company, in New York.

Twenty (20) per cent. of the price thereof on the 15th day of April, 1882, at the said office.

Twenty (20) per cent. thereof on the 15th day of June, 1882, at the said office.

Twenty (20) per cent. thereof on the 15th day of August, 1882, at the said office.

The remaining thirty (30) per cent. thereof on the 15th day of October, 1882, at the said office.

All of the said payments shall bear interest from the 15th day of February, 1882, until paid ; but any person en-

titled to the said bonds shall be entitled to anticipate any or all of the said payments.

Whenever ten (10) per cent. of the price of the said bonds shall be paid, a like per cent. of the amount of the bonds shall be delivered, and accordingly, as the said payments are made, a pro rata amount of bonds shall be issued and delivered."

And whereas, at a meeting of the Board of Directors of the Richmond and Danville Railroad Company thereafter held at the office of the company, in the city of Richmond, on the 18th day of January, 1882, the following resolutions were unanimously adopted, viz.:

"Resolved, That in obedience to the directions contained in certain resolutions adopted by the stockholders of this company at a meeting held on this the 18th day of January, 1882, the president of this company is authorized to execute, in the name of the company, under his hand as its president, and its corporate seal, four thousand debenture bonds for the sum of one thousand dollars each, dated the first day of April, 1882, payable forty-five years after date, bearing interest at the rate of six per centum per annum, numbered consecutively from one to four thousand, inclusive, with coupons for interest thereto attached, payable semi-annually; the form of which bonds and coupons so to be issued shall be in substance and effect as follows, viz.:

\$1,000.

\$1,000.

UNITED STATES OF AMERICA,
STATE OF VIRGINIA.

THE RICHMOND AND DANVILLE RAILROAD COMPANY

(ENGRAVING.)

No. DEBENTURE BOND. No.

The Richmond and Danville Railroad Company acknowledges itself to be indebted to the Central Trust Company of New York, or bearer, in the sum of one thousand dollars, lawful money of the United States, which sum it promises to pay, at its office in the city of Richmond, State of Virginia, or at the office of its agent, in the city of New York, on the first day of April, one thousand nine hundred and twenty-seven; and to pay as interest upon the principal of this bond such sum, not exceeding six per centum per annum, as shall remain out of the net earnings of the

company, in each year, after paying the interest upon all bonds secured by existing liens upon its property, the rental of all properties now leased by the said company, and its operating expenses. In its operating expenses shall be included expenditures made for the repair, renewal and improvement of its existing property, as well as for purchases or construction of additional property and equipment necessary for the proper conduct of its business. The amount of interest to be paid in each year shall be determined by the Board of Directors, within sixty days after the thirtieth day of September in each year, that being the termination of the fiscal year; and, when so determined, shall be paid in two semi-annual instalments, viz.: on the first days of April and October of each year, and in such proportions as the board may determine; provided, that if less than six per centum be paid in any one year, even though less be earned, the unpaid interest shall be carried forward, and shall accumulate to the credit of this bond, and no dividend shall be paid upon the stock of the company until all arrears of interest upon this bond, calculating the interest thereon at the rate of six per centum per annum from date of issue, shall have been paid. The said payments of interest, when made, shall be applied to the redemption of the coupons hereto attached, in the order of their maturity, but the said coupons, if unpaid, shall not bear interest.

This bond is one of a series of four thousand bonds for one thousand dollars each, all of like tenor, date and amount, issued pursuant to a resolution of the stockholders of said company, adopted at a meeting held on the 18th day of January, eighteen hundred and eighty-two.

The payment of the principal hereof, at maturity, and of the interest hereof, as herein promised to be paid, is secured by a mortgage, or deed of trust, dated the first day of February, eighteen hundred and eighty-two, whereby the entire property, works, franchises and income of the said company are conveyed to the Central Trust Company of New York as trustee. This bond shall not become obligatory until duly authenticated by the signature of the trustee endorsed upon the certificate hereon.

In witness whereof the Richmond and Danville Railroad Company has caused its corporate seal to be hereunto affixed, and this bond to be signed by its president and treasurer this first day of April, eighteen hundred and eighty-two.

_____, Treasurer.

_____, President.

FORM OF COUPON.

Coupon of Debenture Bond No. .

The Richmond and Danville Railroad Company will pay to bearer, at its agency, in the city of New York, thirty dollars on the _____ day of _____ on conditions set forth in said bond, being six months' interest thereon.

_____, Treasurer.

TRUSTEE'S CERTIFICATE.

This bond is one of a series amounting in the aggregate to four million dollars, and is secured by lien created by deed of trust, or mortgage, executed on the first day of February, 1882, by the Richmond and Danville Railroad Company to the Central Trust Company of New York, Trustee.

CENTRAL TRUST COMPANY
OF NEW YORK, Trustee.

By _____, President.

Resolved, That the President of this company is hereby authorized to execute, on behalf the company, a proper deed of trust, or mortgage, conveying the entire property, works, franchises and income of the company to the Central Trust Company of New York, as trustee, to secure the payment of the principal and interest of the said bonds, and to cause the corporate seal of the company to be affixed to the said deed."

Now, therefore, this indenture witnesseth, that the said Richmond and Danville Railroad Company, in consideration of the premises, and the sum of one dollar, to it duly paid by the Central Company of New York, at or before the delivery of these presents, the receipt whereof is hereby acknowledged, and for the purpose of securing the payment, at maturity, of the principal of the said bonds, to be issued as aforesaid, and of the interest thereon, when earned and ordered to be paid, as provided in the said bonds, doth hereby grant, bargain, sell, assign and set over unto the said Central Trust Company of New York, as trustee, the entire railway of said company, extending from and including the depot lot, in the city of Richmond, to the town of Danville, in the State of Virginia, and all its lateral road or branches, with all the lands

attached and belonging to said railway and branches, and used in connection therewith, including all depot lots, depots, wharves, docks, warehouses, machine-shops, bridges, and all other structures and their appurtenances, together with all the company's engines, cars, rolling-stock, equipment, machinery, implements and materials, whether the said cars, engines and rolling-stock are now used upon the Richmond and Danville Railroad, or any of its leased lines, or any of its connecting lines, and all other property, works and effects of the said Richmond and Danville Railroad Company appertaining to, or used in connection with, the said railway and branches, or in operating the same, wherever the same may be situated, or in whatever manner the same may be held, except the branch road extending from the main line of the Richmond and Danville Railroad in the city of Manchester, to a point on the James river opposite to that part of the city of Richmond called Rocketts, and except the real estate, wharves, warehouses and terminal facilities owned by the Richmond and Danville Railroad Company on or near the James river opposite to Rocketts, which are not intended to be included in this deed.

Also, all property and effects so pertaining to, and to be used in connection with, said railway and in operating the same, which the said company may hereafter at any time acquire.

Also the corporate rights, privileges, franchises, estates, and annually accruing net income of said company of every kind, now owned, or which may hereafter be acquired.

Also, the leasehold and all the rights acquired by the Richmond and Danville Railroad Company in and to the Richmond, York River and Chesapeake Railroad, by a certain contract, made on the 9th day of July, eighteen hundred and eighty-one, between the said Richmond, York River and Chesapeake Railroad Company and the said Richmond and Danville Railroad Company, except the interest acquired by the Richmond and Danville Railroad Company, under the said contract, in the stock of the Baltimore, Chesapeake and Richmond Steamboat Company, and in the real estate, warehouses, wharves and terminal facilities at West Point, owned by the Richmond, York River and Chesapeake Railroad Company, which are not intended to be included in this deed. Nor does this deed include, nor is it intended to include, any real estate, warehouses, wharves or terminal facilities which are now or may hereafter be owned at West Point by the Richmond and Danville Railroad Company.

Also, the right, title and interest of the said party of the first part in and to the Piedmont Railroad, and all the works and other property belonging to the Piedmont Railroad Company, and used in connection with said railroad in operating the same, and the leasehold of said railroad and its works, property and franchises, for and during the term of eighty-six years from and after the twentieth day of February, eighteen hundred and seventy-four, acquired by deed of lease, executed by the said Piedmont Railroad Company to the said party of the first part, bearing date the fourteenth day of September, eighteen hundred and seventy-four.

Also, the leasehold of the said party of the first part in the North Carolina Railroad, and the property, real and personal, used in connection therewith, and in operating the same, together with all the appurtenances of every sort thereto belonging, which were conveyed to the said party of the first part by the North Carolina Railroad Company, by deed bearing date the eleventh day of September, eighteen hundred and seventy-one, and duly recorded in the county of Alamance, in the State of North Carolina.

Also all the right, title, interest and property of the party of the first part in and to the line of railway extending from Charlotte, in the State of North Carolina, to the city of Atlanta, in the State of Georgia, and the works, property and franchises thereto pertaining, held by the said party of the first part, under certain agreements contained in a contract made on the twenty-sixth day of March, eighteen hundred and eighty-one, between the Richmond and Danville Railroad Company, party of the first part, and the Atlanta and Charlotte Air Line Railway Company, party of the second part, whereby the right is secured to the Richmond and Danville Railroad Company to perpetually control, manage and operate the said Atlanta and Charlotte Air Line Railway and all the works, property, franchises and income thereof.

Also all the right, title and interest of the said party of the first part in and to the line of connecting railway, extending from the depot of the party of the first part, in the city of Richmond, to the depot of the Richmond, York River and Chesapeake Railroad Company in said city, not including, however, a certain lot of ground with a brick tenement thereon, belonging to the said party of the first part, situated on Dock street, in the city of Richmond, and known as the Palmer lot, the said lot not being used in connection with the said railway nor for railroad purposes.

The several lines of railway hereinbefore described con-

stitute and form a continuous line of railway from West Point, in the State of Virginia, to the city of Atlanta, in the State of Georgia, and to the town of Goldsboro', in the State of North Carolina, controlled, managed and operated by the said party of the first part.

But this deed does not include, and is not intended to include, any stocks or bonds which are now, or may hereafter be, owned by the Richmond and Danville Railroad Company, and the said Richmond and Danville Railroad Company expressly reserves the right and absolute authority to sell or otherwise dispose of all stock and bonds which are now, or may hereafter be, owned by it as fully as if this deed had not been made.

To have and to hold, all and singular, the above mentioned and described property, together with its appurtenances, unto the said Central Trust Company of New York, its successors and assigns, forever, in trust, to secure the payment of the principal and interest of the four thousand debenture bonds, amounting in the aggregate to the principal sum of four million dollars, hereinbefore mentioned and described, for the equal benefit of all and every person or persons, or bodies corporate, who shall at any time be or become the holder or holders of the said debenture bonds, or of such of them as shall be issued by the party of the first part, and without preference of any one of said bonds over another, by reason of priority of time of issuing the same, or for any other reason whatsoever, subject, however, to the right of the said party of the first part to retain the free and uncontrolled use, enjoyment, possession and management of the aforesaid premises, property and income hereby granted, until the said party of the second part is authorized to enter upon, or take possession of, or sell the same, as hereinafter provided; and to the right of the said railroad company, party of the first part, to use its income in paying the interest upon all bonds secured by mortgages, or trust deeds, heretofore executed by it, and which have not heretofore been paid or cancelled, the right being expressly reserved to issue and to use such of the bonds, secured by the mortgage or deed of trust, executed by the said party of the first part, to Isaac Davenport, Jr., and George B. Roberts, trustees, on the fifth day of October, eighteen hundred and seventy-four; subject, also, to the right of the said party of the first part to use its income in the payment of the rental of all properties now leased by it, and in the payment of all sums of money agreed to be paid, by and under the several contracts, by and under which the said party of the first part controls, manages and operates the several lines

of railway hereinbefore mentioned and described, whether the said payments be denominated rents or otherwise; subject, also, to the right of the said party of the first part to use its income in the payment of its operating expenses, including in its operating expenses all expenditures made for the repair, renewal and improvement of its existing property, as well for the purchase or construction of additional property and equipment necessary for the proper conduct of its business.

But if default shall be made by the said party of the first part in the payment of the principal of any of the said bonds at maturity, and such default shall continue for the period of ninety days after such principal shall have been demanded, or if default shall be made in the payment of the interest upon any of said bonds, when earned and declared in accordance with the terms and conditions of said bonds, and such default shall continue for the period of ninety days after the same shall have been ordered by the Board of Directors of the said Richmond and Danville Railroad Company to be paid, and for the period of ninety days after payment of such interest shall have been demanded; or if the said company shall, at any time, fail to pay its pay-rolls or supply bills, and such defaults to the amount of one hundred thousand dollars, shall continue for the period of six months after the same are due and payable, and the validity of the claims therefor shall have been established, or shall commit any other act or default, by reason of which a lien or liens to the amount of one hundred thousand dollars, may attach to the property herein conveyed, prior in rank to this deed, and the said liens shall not be paid off within six months after the validity thereof shall have been established, then the said Central Trust Company of New York shall have the right, upon the written request of the holders of one-fourth in amount of the said bonds, and upon being satisfactorily indemnified, it shall be the duty of the said trustee to enter upon and take possession of the railroads, property and premises hereby conveyed, and to operate, manage, control and use the same to the best advantage, and to apply the net income to be derived therefrom (after deducting the expenses of executing this trust, including a reasonable compensation to the trustee, and such expenses as may be incurred in the management and operation of the said railroads, and other payments, subject to which this conveyance is made), to the payment of the interest on all of said bonds, in full, if the said net income be sufficient, but if not, then *pro rata*; or the said trustee shall

after or without entering upon or taking such possession, upon the written request of the holders of one-fourth in amount of said bonds, proceed to sell the railroad, estate, real and personal, corporate rights, franchises and premises hereby conveyed, or agreed, or intended so to be, to the highest and best bidder, at public auction in the city of Richmond, Virginia (after having first given at least three months notice of such intended sale, by publication to be made twice in each week, in at least one daily newspaper published in each of the cities of Richmond, Virginia; Baltimore, Maryland; Philadelphia, Pennsylvania; New York, New York, and Atlanta, Georgia), and grant and convey the same to the purchaser or purchasers thereof, freed from all and every the trusts hereby created, and without any liability on the part of such purchaser or purchasers to see to the application of the purchase money; and after deducting from the proceeds of said sale all expenses connected therewith, and all expenses, advances and liabilities incurred by the said trustee in operating said railroad, including a reasonable compensation for the services of the said trustee, and all taxes, assessments and liens, if any, prior in rank to the debt hereby secured, shall apply the residue of the proceeds of sale—first, to the payment, ratably, of the interest; and, second, to the payment, ratably, of the principal of the bonds hereby secured; all coupons to be paid in the order of their maturity.

If, after the payment in full of the principal and interest of said bonds, as aforesaid, any surplus shall remain in the hands of the said trustee, such surplus shall be paid over to the said party of the first part, its successors or assigns.

It is further agreed that, in the event of any such sale being made by the said trustee, as hereinbefore mentioned, the whole amount of the principal of the said bonds shall forthwith become due and payable:

Provided, nevertheless, that at any time before making such sale, the parties holding a majority in amount of the principal of said bonds, may, by an instrument in writing, signed by them and addressed to the trustee, waive the right to deem the principal of said bonds to be due.

Provided, further, that if the said trustee should decline to exercise the power of sale hereby given, and shall prefer to institute legal proceedings for foreclosure and sale of the property hereby conveyed, and for the appointment of a receiver, then and in such case, the party of the first part agrees, that it will consent to the appointment of such person or persons, receiver or receivers, as may be

nominated by the said trustee, with the consent in writing of the parties then holding a majority in amount of the bonds secured by this deed.

It is further agreed between the parties hereto, that it shall be lawful for the said party of the first part, at any time during the existence of this trust, to sell such machinery, rolling-stock, or material as may become unserviceable, or to sell any lands now used for stations, depots, warehouses or otherwise, and to convey the same.

It is further agreed that in case the said Central Trust Company of New York shall, at any time, desire to resign said office of trust, or shall, for any reason, cease to be trustee, or in case of the death, removal by a court of competent jurisdiction, or disability from any cause whatever, of the present or any future trustee, the president and directors of the said Richmond and Danville Railroad Company shall have the power to appoint a trustee or trustees to fill the vacancy, and in case the said president and directors do not make the appointment within sixty days after the occurrence of such a vacancy, the holders of a majority in amount of the said bonds may apply to any court of the State of Virginia having jurisdiction in the premises, to appoint a trustee or trustees to fill the vacancy; and thereupon, and in either case, such new trustee or trustees shall, when appointed, be vested with all the estate, powers and duties hereby conveyed to or vested in the said Central Trust Company of New York, without any further assurance or conveyance of the same.

It is further agreed between the parties hereto that the said trustee, its successor or successors, shall be responsible only for good faith and reasonable diligence in the management and exercise of the trusts herein declared, and shall not be responsible for the default or acts of any agent employed by it or them, in the exercise of said trusts, when such agents shall have been selected with reasonable discretion.

Upon the payment, or satisfaction in full, of the principal and interest of the bonds secured by this deed, all the estate, right, power and authority of the said trustee, in or to the premises herein described and conveyed, shall cease and determine, and all of the said property, real and personal, shall, without other or further acknowledgment, conveyance, act or deed, revert to and remain in the Richmond and Danville Railroad Company, discharged from the trusts hereby created.

The said Richmond and Danville Railroad Company covenants for itself, its successors and assigns, that it, its

successors and assigns, shall and will, from time to time, and at all times hereafter, execute, deliver and acknowledge, or cause to be executed, delivered and acknowledged, all and every such further acts, conveyances and assurances in the law, for the better assuring to the said trustee, its successor or successors, of the premises, in manner as above conveyed, or intended to be conveyed, as by the said trustee, its successor or successors, or its counsel, learned in the law, shall be reasonably advised and required.

It is further agreed that all the provisions of this deed, whereby the said debenture bonds are secured, shall apply also to any debenture bonds which may be given hereafter by the said party of the first part in renewal or extension of any of said bonds.

But the acceptance of such renewed or extended bonds shall be optional with the holders of the bonds which it may be proposed to renew, and the bonds so given in renewal or extension shall, as to the provisions of this deed and the priorities of security, occupy the same position as the bonds for which they may have been respectively substituted.

In testimony whereof the said Richmond and Danville Railroad Company hath hereunto affixed its corporate seal and caused this deed to be signed by A. S. Buford, its president; and the said Central Trust Company of New York hath hereunto affixed its corporate seal and caused this deed to be signed by H. F. Spaulding, its president, in testimony of its acceptance of the trust hereby imposed upon it.

RICHMOND AND DANVILLE RAILROAD COMPANY.

By _____, President.

Attest :

_____, Secretary.

CENTRAL TRUST COMPANY OF NEW YORK,

By _____, President.

Attest :

_____, Secretary.

STATE OF VIRGINIA. }
City of Richmond, } To-wit:

I, _____, a notary public for the city of Richmond, in the State of Virginia, do certify that A. S. Buford, president of the Richmond and Danville Railroad Company, whose name is signed to the writing hereto annexed, bearing date on the first day of February, one thousand eight hundred and eighty-two, has acknowledged the same before me in my city aforesaid.

Given under my hand this _____ day of _____.

STATE AND CITY OF NEW YORK, } To-wit.

I, _____, a commissioner appointed by the Governor of the State of Virginia, for the said State of New York, certify that H. F. Spaulding, president of the Central Trust Company of New York, whose name is signed to the writing above bearing date on the first day of February, 1882, and who is known to me to be the president of the said Central Trust Company, has acknowledged the same before me in my State aforesaid.

Given under my hand and official seal this _____ day
of _____ Anno Domini, 1882.

EXHIBIT 3.

The Richmond and Danville
Railroad Company }
to
Central Trust Company of }
New York.

CONSOLIDATED MORTGAGE.

October 22, 1886.

This indenture, made this the twenty-second day of October, in the year one thousand eight hundred and eighty-six, between The Richmond and Danville Railroad Company, a corporation created by and organized under the laws of the State of Virginia, party of the first part, and the Central Trust Company of New York, as trustee, party of the second part, Witnesseth:

That, whereas the said The Richmond and Danville Railroad Company did, on the fifth day of October, A. D. 1874, execute and deliver to Isaac Davenport, Jr., and George B. Roberts, as trustees, its certain mortgage deed of trust of that date, thereby conveying to said trustees the main, branch and leased lines of railroad, real and personal property, rights, interests and estates therein described, to secure the payment of the principal and interest of its bonds of even date with said deed of trust, and payable in gold coin January 1st, 1915, to an aggregate amount not exceeding six million dollars, with interest at the rate of six per centum per annum, payable semi-annually, and all of which said bonds have been issued and are outstanding; and

Whereas the said The Richmond and Danville Railroad Company did, on the first day of February, A. D. 1882, execute and deliver to the Central Trust Company of New York, as trustee, its certain mortgage deed of trust of that date, conveying to said trustee the main, branch and leased lines of railroad, real and personal property, rights, interests and estates therein described to secure the principal and interest of its debenture bonds of even date with said deed of trust and payable forty-five years after said date, to the aggregate amount of four million dollars, with interest at not exceeding the rate of six per centum per annum, payable out of the net earnings of the company in the manner provided in said deed of trust, and all of which said bonds have been issued and are outstanding; and

Whereas the interests of the said The Richmond and Danville Railroad Company will be promoted by providing

for the retirement of both of the aforesaid issues of bonds and the consolidation of its bonded indebtedness by an issue of bonds payable in gold coin, with a fixed and determined rate of interest payable semi-annually, and of uniform time of maturity and dignity of lien, and at the same time providing for additional means needed by the company; and

Whereas the said The Richmond and Danville Railroad Company has express charter power and authority "to purchase and hold, or to guarantee the bonds or stocks, or lend aid to other railroads or transportation lines chartered by the laws of North Carolina or any State other than Virginia"; and

Whereas, by virtue of said charter power the said The Richmond and Danville Railroad Company has acquired large interests in the bonds and stocks of railroads in North Carolina and other States, forming parts of its leased, owned and operated system of railroads, and may hereafter acquire other and further interests of the same nature; and

Whereas, in the exercise of its said charter power and authority, the said The Richmond and Danville Railroad Company has become and is liable as guarantor of the first mortgage bonds of the Northwestern North Carolina Railroad Company issued under a mortgage deed of trust to H. H. Marshall and E. A. Barber, trustees, dated October 24th, 1872, to the amount of five hundred thousand dollars; and

Whereas, in view of the premises, the Board of Directors of the said The Richmond and Danville Railroad Company, at a meeting duly held at the office of the company on the twenty-first day of October, A. D. 1886, duly determined to issue coupon bonds of said company to be denominated consolidated mortgage gold bonds, each for the sum of one thousand dollars, or two hundred pounds, dated the first day of October, A. D. 1886, signed by the president and countersigned by the secretary, with the corporate seal affixed, and payable fifty years after date in gold coin of the United States of America or sterling money of Great Britain, with interest at not exceeding the rate of five per centum per annum, payable semi-annually, on the first days of April and of October in each and every year, and with privilege of registration at the option of the holder, and that to secure the payment of the principal and interest thereof the president be authorized and directed to duly execute, acknowledge and deliver, in the name of the company and under its corporate seal, a mortgage deed of trust to the Central Trust Company of New

York, as trustee for the holders of said bonds, conveying all the main, branch and leased lines, real and personal property, rights, interests and estate of the company as hereinafter more fully mentioned and described; and

Whereas the said Board of Directors at said meeting further determined that the said consolidated mortgage gold bonds should be limited to an issue of eleven million, two hundred and twenty thousand dollars of bonds, to be reserved and retained by the said trustee for the sole purpose of taking up, refunding, exchanging or providing for the payment of the present above-recited bonded indebtedness and liability of the said six million dollars of six per cent. gold bonds and of the said four million dollars of debenture bonds and unpaid interest thereon, and of the said five hundred thousand dollars of first mortgage guaranteed Northwestern North Carolina Railroad Company bonds, and thereafter to an amount of bonds not to exceed the sum of fifteen thousand dollars per mile of railroads now or hereafter owned, leased, operated or controlled by the said The Richmond and Danville Railroad Company, bearing such rate of interest, not exceeding five per centum per annum, as the Board of Directors may determine, to be issued from time to time in corresponding amounts to and only as and when mortgage bonds of any such railroads having priority of lien, and issued at a rate not to exceed fifteen thousand dollars per mile, shall be deposited with said trustee as part of the property pledged, conveyed and covered by and subject to all the terms, conditions and provisions of said mortgage deed of trust whereby the said consolidated mortgage gold bonds are secured, and in addition thereto bonds to the amount of twenty-five hundred dollars per mile of such mileage may be issued for the purpose of purchasing equipment and not otherwise; and that said mortgage deed of trust shall contain a special provision and agreement to the issue of said bonds upon the conditions herein recited; and that said consolidated mortgage gold bonds be substantially in the form following, that is to say:

THE UNITED STATES OF AMERICA.

State of Virginia.

THE RICHMOND AND DANVILLE RAILROAD COMPANY.

Consolidated Mortgage Gold Bond, Five Per Cent.

\$1,000.

No.

\$1,000.

Know all men by these presents that The Richmond and Danville Railroad Company, a corporation under the

laws of the State of Virginia, for value received, hereby acknowledges itself indebted and promises to pay to the Central Trust Company of New York, trustee, or to the bearer hereof, and in accordance with the provisions as to registration hereinafter mentioned, the sum of one thousand dollars in gold coin of present standard of weight and fineness of the United States of America, payable at the financial agency of said company in the city of New York on the first day of October, A. D. 1936, with interest thereon in like gold coin at the rate of five per centum per annum, payable semi-annually, on the first days of April and October in each and every year, on the presentation and surrender at said agency of the proper interest coupon hereto attached.

This bond is one of a series of bonds of like tenor and effect, issued to the amount of eleven million, two hundred and twenty thousand dollars, and to be issued to an additional aggregate amount not exceeding the sum of fifteen thousand dollars per mile of the respective mileage of properties and railroads now or hereafter owned and controlled by the said obligor, in the manner provided in the mortgaged deed of trust whereby this bond is secured, and being a mortgaged deed of trust, of even date herewith, to the Central Trust Company of New York, as trustee, conveying the main, branch and leased lines of railroad, real and personal property, rights, interests and estate of the said obligor, as therein mentioned and specified, and an additional amount of bonds, at the rate of \$2,500 per mile, may be issued for the purchase of equipment, and not otherwise, as specified in said mortgaged deed of trust.

Bonds of this series to the amount of eleven million two hundred and twenty thousand dollars in all, are reserved by said trustee for the sole purpose of taking up, refunding, exchanging, or providing for the payment of the six per cent. gold bonds of the said obligor to the amount of six million dollars, issued under a mortgage deed of trust dated October 5th, 1874, and of debenture bonds of said obligor to the amount of four million dollars and interest, issued under a deed of trust dated February 1st, 1882, and of first mortgage bonds of the Northwestern North Carolina Railroad company, dated October 24th, 1872, to the amount of five hundred thousand dollars, guaranteed by the said obligor, as provided in the said mortgage deed of trust of even date herewith, under which this bond is issued.

If default in the payment of interest on this bond be made and continue six months after due demand, the principal hereof, at the option of said trustee, subject to the

Or, substantially, in the form following, that is to say :

THE UNITED STATES OF AMERICA,
State of Virginia.

THE RICHMOND AND DANVILLE RAILWAY COMPANY.

Consolidated Mortgage Sterling Bond, Five Per Cent.

£200.

No.

£200.

Know all men by these presents : That The Richmond and Danville Railroad Company, a corporation under the laws of the State of Virginia, in the United States of America, for value received, hereby acknowledges itself indebted and promises to pay to the Central Trust Company of New York, Trustee, or to the bearer hereof, and in accordance with the provisions as to registration hereinafter mentioned, the sum of two hundred pounds in sterling money of Great Britain, payable at its financial agency in the city of London, England, on the first day of October, A. D. 1936, with interest thereon in like money at the rate of five per centum per annum, payable semi-annually on the first days of April and October in each and every year, on the presentation and surrender at said agency in the city of London of the proper interest coupon hereto attached.

This bond is one of a series of bonds of like tenor and effect, issued to the amount of eleven million two hundred and twenty thousand dollars, and to be issued to an additional aggregate amount not exceeding the sum fifteen thousand dollars per mile of the respective mileage of properties and railroads now or hereafter owned and controlled by the said obligor, in the manner provided in the mortgage deed of trust whereby this bond is secured, and being a mortgage deed of trust, of even date herewith, to the Central Trust Company of New York, as Trustee, conveying the main, branch, and leased lines of railroad, real and personal property, rights, interests, and estate of the said obligor, as therein mentioned and specified, and an additional amount of bonds, at the rate of \$2,500 per mile, may be issued for the purchase of equipment, and not otherwise, as specified in said mortgage deed of trust.

Bonds of this series to the amount of eleven million two hundred and twenty thousand dollars in all are reserved by said trustee for the sole purpose of taking up, refunding, exchanging or providing for the payments of the six per cent. gold bonds of the said obligor to the amount of six million dollars, issued under a mortgage deed of trust dated October 5th, 1874, and of debenture

bonds of said obligor to the amount of four million dollars and interest, issued under a deed of trust dated February 1st, 1882, and of first mortgage bonds of the Northwestern North Carolina Railroad Company dated October 24th, 1872, to the amount of five hundred thousand dollars, guaranteed by the said obligor, as provided in the said mortgage deed of trust of even date herewith, under which this bond is issued.

If default in the payment of interest on this bond be made, and continue six months after due demand, the principal hereof, at the option of said trustee, subject to the control of a majority in interest of the holders of said bonds, shall become due as provided in said mortgage.

This bond is transferable by delivery except when indorsed as registered in the name of the owner upon the books of the company, and such registered owner may at any time make the same transferable by delivery by having it registered payable to bearer; but the interest coupons shall remain transferable by delivery, notwithstanding registration of the bond to which the same is attached.

This bond will not be valid unless the certificate indorsed hereon is signed by said trustee.

In witness whereof, the said The Richmond and Danville Railroad Company has caused its corporate seal to be hereto affixed and these presents to be signed by its president and countersigned by its secretary this the first day of October, A. D. 1886.

[L S]

President.

Secretary.

COUPON.

£5.

£5.

The Richmond and Danville Railroad Company will pay the bearer on the first day of _____, 18____, five pounds in sterling money, at its agency in the city of London, for six months interest on its Consolidated Mortgage Sterling Bond No.

Treasurer.

TRUSTEE'S CERTIFICATE.

It is hereby certified that the within bond is one of the series mentioned in the deed of trust therein referred to.

CENTRAL TRUST COMPANY OF NEW YORK,

Trustee.

By

President

Now, therefore, this indenture further witnesseth: That in consideration of the premises and of the sum of One Dollar paid by each of the parties hereto to the other, the receipt whereof is hereby mutually acknowledged, it is hereby covenanted and agreed by and between the Richmond and Danville Railroad Company, party of the first part hereto, and the Central Trust Company of New York, party of the second part hereto, as follows:

First. This mortgage shall be a security for the whole or any part of the amount of the bonds authorized to be issued as herein aforesaid, and all bonds issued hereunder shall be equally secured hereby without regard to the time when the same may be issued.

Second. The party of the first part covenants and agrees to pay to the lawful holders of the bonds hereby secured the principal therein agreed to be paid at the maturity of said bonds upon the surrender thereof, and to pay interest thereon in the manner and at the times and upon the terms and conditions in said bonds and this indenture mentioned.

Third. The party of the first part agrees to keep at an agency in the city of New York an appropriate book for the purpose of registration and transfer of the bonds secured hereby, and any holder thereof shall be entitled to have his name and address and the number of any of said bonds held by him entered therein upon verifying his title to such bonds by the production thereof, and personal identification when required, or upon written order, duly verified, of the person last registered as the owner. Such registration shall authenticate the title of the holder of every bond so registered to act in the matter of the administration of the trust hereby created, and after such registration no transfer except upon said register shall be valid, either as to the Trustee or otherwise, unless the last registration shall have been to bearer. Each bond shall continue subject to successive registrations and to transfers to bearer at the option of the owner, but the interest coupons shall at all times be transferable by delivery, notwithstanding registration of the bond to which the same may be attached.

Fourth. That the said party of the first part, its successor or successors, shall have the right to deposit, from time to time, with the said party of the second part, as Trustee, mortgaged bonds having priority of lien and issued to an aggregate amount of not exceeding Fifteen Thousand dollars per mile, of any railroad company which now is, or hereafter may be, owned, leased, operated, or controlled by

the said party of the first part, its successor or successors, to be held by said Trustee, in addition to the property hereinafter specially mentioned and described, subject to all the trusts and conditions hereinafter expressed and declared for the security of the holders of the bonds issued hereunder; and thereupon an equal and corresponding amount of the bonds authorized to be issued hereunder shall at the time of any such deposit be issued and delivered by the said Trustee to the said party of the first part, its successor, successors, or assigns, as hereinafter provided.

And in further consideration of the premises, and of the sum of One Dollar to it paid by the said Central Trust Company of New York, the receipt whereof is hereby acknowledged, and to secure the payment of the principal and interest of all the bonds issued hereunder according to the tenor and effect thereof, without preference or priority, and equally and ratably, the said The Richmond and Danville Railroad Company doth hereby grant, bargain, sell, convey, assign, transfer, and set over unto the said Central Trust Company of New York, and its successor or successors in the trusts herein and hereby created, and its and their assigns, the following described real and personal property, that is to say:

All and singular the entire railway of the said The Richmond and Danville Railroad Company, extending from and including the depot lot in the city of Richmond to the town of Danville, in the State of Virginia, and all its lateral road or branches, with all the lands attached and belonging to said railway and branches, and used in connection therewith, including all depot lots, depots, wharves, docks, warehouses, machine shops, bridges, and all other structures and their appurtenances, together with all the Company's engines, cars, rolling-stock, equipment, machinery, implements and materials, whether the said cars, engines, and rolling-stock are now used upon the Richmond and Danville Railroad, or any of its leased lines, or any of its connecting lines, and all other property, works, and effects of the said The Richmond and Danville Railroad Company appertaining to or used in connection with the said railway and branches, or in operating the same, wherever the same may be situated, or in whatever manner the same may be held, except the branch road extending from the main line of The Richmond and Danville Railroad, in the city of Manchester, to a point on James River opposite to that part of the city of Richmond called Rocketts, and except the real estate, wharves, warehouses, and terminal facilities owned by The Richmond and Danville Railroad Company on or near the James River opposite to Rocketts, which are not intended to be included in this deed.

Also all property and effects so pertaining to and to be used in connection with said railway and in operating the same which the said company may hereafter at any time acquire.

Also the corporate rights, privileges, and franchises of said company of every kind now owned or which may hereafter be acquired.

Also the leasehold and all the rights acquired by The Richmond and Danville Railroad Company in and to the Richmond, York River and Chesapeake Railroad by a certain contract made on the ninth day of July, eighteen hundred and eighty-one, between the said Richmond, York River and Chesapeake Railroad Company and the said The Richmond and Danville Railroad Company, except the interest acquired by The Richmond and Danville Railroad Company, under the said contract, in the stock of the Baltimore, Chesapeake and Richmond Steamboat Company, and in the real estate, warehouses, wharves, and terminal facilities at West Point owned by the Richmond, York River and Chesapeake Railroad Company, which are not intended to be included in this deed. Nor does this deed include, nor is it intended to include, any real estate, warehouses, wharves, or terminal facilities which are now or may hereafter be owned at West Point by The Richmond and Danville Railroad Company.

Also the right, title, and interest of the said party of the first part in and to the Piedmont Railroad, and all the works and other property belonging to the Piedmont Railroad Company and used in connection with said railroad in operating the same, and the leasehold of said railroad and its works, property, and franchises for and during the term of eighty-six years from and after the twentieth day of February, eighteen hundred and seventy-four, acquired by deed or lease, executed by the said Piedmont Railroad Company to the said party of the first part, bearing date the fourteenth day of September, eighteen hundred and seventy-four.

Also the leasehold of the said party of the first part in the North Carolina railroad and the property, real and personal, used in connection therewith, and in operating the same, together with all the appurtenances of every sort thereto belonging, which were conveyed to the said party of the first part by the North Carolina Railroad Company by deed bearing date the eleventh day of September, eighteen hundred and seventy-one, and duly recorded in the county of Alamance, in the State of North Carolina.

Also, all the right, title, interest and property of the

party of the first in and to the line of railway extending from Charlotte, in the State of North Carolina, to the city of Atlanta, in the State of Georgia, and the works, property and franchises thereto pertaining held by the said party of the first part under certain agreements contained in a contract made on the twenty-sixth day of March, eighteen hundred and eighty-one, between The Richmond and Danville Railroad Company, party of the first part, and the Atlanta and Charlotte Air-Line Railway Company, party of the second part, whereby the right is secured to The Richmond and Danville Railroad Company to perpetually control, manage and operate the said Atlanta and Charlotte Air-Line Railway and all the works, property, franchises and income thereof.

Also, all the right, title and interest of the said party of the first part in and to the line of connecting railway extending from the depot of the party of the first part, in the city of Richmond, to the depot of the Richmond, York River and Chesapeake Railroad Company in said city, not including, however, a certain lot of ground with a brick tenement thereon belonging to the said party of the first part, situated on Dock street, in the city of Richmond, and known as the Palmer lot, the said lot not being used in connection with the said railway, nor for railroad purposes.

Also, all of the leasehold right, title and interest of the said party of the first part in and to the following mentioned and designated properties, that is to say :

First. In and to The Virginia Midland Railway and all its branches, leasehold estates and rights, equipment, appurtenances, assets, property and franchises, as the same are leased, assigned and conveyed to the said party of the first part by the said The Virginia Midland Railway Company by an indenture of lease dated and executed the fifteenth day of April, A. D. 1886.

Second. And in and to the Western North Carolina Railroad, and all its branches, extensions, leasehold estates and rights, equipment, assets, property and franchises, as the same are leased, assigned and conveyed to the said party of the first part by the said Western North Carolina Railroad Company by an indenture of lease dated and executed the first day of May, A. D. 1886.

Third. And in and to the Charlotte, Columbia and Augusta Railroad and all its branches, leasehold estates and rights, equipment, assets, property and franchises, as the same are leased, assigned and conveyed to said party of the first part by the said Charlotte, Columbia and Augusta

Railroad Company by an indenture of lease dated and executed the first day of May, A. D. 1886.

Fourth. And in and to The Columbia and Greenville Railroad Company and all its branches, leasehold estates and rights, equipment, assets, property and franchises, as the same are leased and conveyed to the said party of the first part by the said The Columbia and Greenville Railroad Company by an indenture of lease dated and executed the first day of May, A. D. 1886.

It being fully understood and agreed that each and every of the said four last-mentioned leasehold estates of the said party of the first part, and all the right, title, interest, claim or demand, either at law or in equity, vested in the said party of the first part by virtue of each, every and all of the said four several indentures of lease last above mentioned and described, shall, *ipso facto*, by these presents become subject to the lien of this mortgage, and that the said party of the first part shall and will sign, seal, execute and deliver to the said party of the second part, or its successor in the trusts hereinafter expressed and declared, all such other and further transfers, assignments, conveyances or assurances as it shall be advised may be necessary or proper to vest in the said party of the second part, as trustee as aforesaid, the leasehold rights, titles, and interests which are now vested in the said party of the first part by virtue of the said four several indentures of lease last above mentioned and designated.

Also all, every and any mortgage bonds having priority of lien issued to an amount not exceeding fifteen thousand dollars per mile of any railroad company which now is, or hereafter may be, leased, owned, operated or controlled by the said The Richmond and Danville Railroad Company, that may be deposited as part of the property hereby assigned and conveyed under the terms and conditions of the fourth article of agreement hereinbefore made and contained.

To have and to hold all and singular the said above-described property, premises, works, leases, rights, franchises, appurtenances and bonds unto the said party of the second part, its lawful successor or successors, and its or their assigns forever, in trust, nevertheless, for the equal *pro rata* benefit and security of all the holders of the said bonds secured hereby, without any preference or priority by reason of priority in time of issue thereof, and for the objects, uses and purposes hereinafter declared and expressed, and subject to the following conditions, that is to say :

First. Bonds issued hereunder to the aggregate amount of eleven million, two hundred and twenty thousand dollars shall be reserved by the said trustee, and be by it issued and delivered to the said party of the first part, its successor or successors, in exchange for equal and corresponding amounts of any of the bonds issued and outstanding to the amount of six million dollars, under a mortgage deed of trust of the said party of the first part, dated the fifth day of October, one thousand eight hundred and seventy-four, to Isaac Davenport, Jr., and George B. Roberts, as trustees, and to the amount of four million dollars, under a mortgage deed of trust of the said party of the first part, dated the first day of February, one thousand eight hundred and eighty-two, to the Central Trust Company of New York, as trustee, and under a first mortgage of the Northwestern North Carolina Railroad Company, dated the twenty-fourth day of October, one thousand eight hundred and seventy-two, to H. H. Marshall and E. A. Barber, as trustees, and guaranteed by the said party of the first part upon the delivery and surrender to said Trustee by the said party of the first part of any of the said herein-specified bonds, with all unpaid interest coupons thereunto belonging; said exchange to be made in equal and corresponding amounts, bond for bond, at par value, for the said six million dollars of bonds issued under the said mortgage deed of trust, dated October 5th, 1874, and for the said five hundred thousand dollars of guaranteed Northwestern North Carolina Railroad Company bonds, and in the proportion of one thousand one hundred and eighty dollars of the said bonds issued and reserved hereunder for each one thousand dollars of the said Debenture Bonds issued under the said mortgage deed of trust, dated February 1st, 1882; and all and every of the said bonds so exchanged and surrendered shall be retained and held by said Trustee without cancellation and without any release, relinquishment or impairment of the lien or security of the said several mortgage deeds of trust under which the said exchanged and surrendered bonds, respectively, have been issued, until the whole amount outstanding of either issue of said bonds, respectively, shall have been exchanged and surrendered as aforesaid; and when the whole amount, as aforesaid, of either issue of said bonds shall have been surrendered to and exchanged as aforesaid, they shall be cancelled and delivered to the said party of the first part, its successor or successors, except the said issue of five hundred thousand dollars of Northwestern North Carolina Railroad Company bonds, which, when so exchanged, shall be held by the said Trustee as bonds deposited under the provisions of this

indenture and the terms and conditions of the second declaration of trust hereinafter next below made and contained; and the fact of a surrender and exchange, as aforesaid, of any of said bonds shall constitute an agreement of the said party of the first part, as the holder and exchanger thereof; that the said trustee thereafter and up to the time of the cancellation or delivery of said bonds as aforesaid, and as the trustee of and solely to and for the benefit, advantage and protection of the holders of all bonds issued and outstanding under this present mortgage deed of trust, shall be invested with and entitled to fully exercise all the rights, privileges, recourses and remedies given, granted and declared to the holder of said exchanged and surrendered bonds by the terms, conditions and provisions of the said mortgage deed of trust under which the same have been respectively issued.

Second. Whenever, and as the said party of the first part, its successor or successors, shall, from time to time, hereafter deposit with the said party of the second part, or its successor in the trusts hereby created and declared, any amount of the mortgage bonds of any railroad company which is now, or hereafter may be, owned, leased, operated, or controlled by the said party of the first part, its successor or successors, issued to an aggregate amount of prior lien or liens not exceeding fifteen thousand dollars per mile of the mileage of the company issuing the same, the said mortgage bonds so deposited shall thereupon and thenceforth be and become and remain part of the property assigned and conveyed to the said trustee by this indenture and subject to all the terms, conditions, and trusts herein expressed and declared, as fully as if the same were so deposited at the time of the delivery of these presents; and thereupon or hereafter the said Trustee shall issue and deliver to the said party of the first part, its successor or successors, upon its or their demand or order, an amount of the consolidated mortgage gold bonds issued hereunder which shall be equal to the amount of said mortgage bonds so from time to time deposited as aforesaid.

It being hereby expressly declared and agreed that, inasmuch as the issuance of bonds under the present first consolidated mortgage of the Western North Carolina Railroad Company is limited to an issue of twelve thousand five hundred dollars per mile of constructed railroad, in case any of the said first consolidated six per cent. gold bonds of the said Western North Carolina Railroad Company shall be deposited under the provisions of this indenture as aforesaid, the said Trustee shall certify and issue to

the said party of the first part, its successor or successors, fifteen thousand dollars of the said consolidated mortgage gold bonds issued hereunder for each and every twelve thousand five hundred dollars of said first consolidated six per cent. Western North Carolina Railroad bonds so deposited.

Third. The said trustee shall, from time to time, certify and deliver to the said party of the first part, its successor or successors, upon its or their demand, in addition to the amount of bonds hereinbefore specified, bonds issued under these presents equal, at par valuation, to the amount which may be hereafter expended by the said party of the first part, its successor or successors, in the purchase of new and additional equipment for use on any of the said lines of railroad, as and when the said party of the first part, its successor or successors, shall file with the said trustee a certificate, signed by its president, under its corporate seal, of the actual cost of such additional equipment: *Provided, nevertheless*, that said Trustee shall not so certify and issue any number or amount of bonds in excess of the rate of twenty-five hundred dollars per mile of the mileage of said lines of railroad.

Fourth. These presents are upon the express condition that, if the said party of the first part, its successor, successors, or assigns, shall well and truly pay, or cause to be paid, the said bonds hereby secured, with interest thereon according to the tenor and effect thereof, then these presents, and the estate, title, and interest hereby conveyed shall cease, determine, and be wholly void, and the right to all the real and personal property hereby granted and conveyed shall revert to and revest in the party of the first part, its successor, successors, or assigns, in law and in equity, without any acknowledgement of satisfaction, reconveyance, surrender, re-entry, or other act, and as fully as if this instrument had not been executed.

Fifth. Until default shall be made in the performance of the stipulations or conditions of the said bonds issued hereunder, or in respect to some act or thing herein required to be done, the said party of the first part, its successor, successors, or assigns, shall hold, possess, manage, operate, use, and enjoy all the property, premises, main, branch, and leased lines of railway and appurtenances, franchises, rights and privileges herein mortgaged and conveyed, and receive, take, and use all the rents, profits, income, tolls, and revenues thereof, and receive from said Trustee all interest coupons attached to any of said de-

posited mortgage bonds, from time to time, as the same may mature and become payable, as fully as if this indenture had not been executed, or said bonds had not been deposited as aforesaid.

Sixth. In case the company issuing any of the bonds which may be deposited with the said trustee under the terms and provisions of this indenture shall, at the maturity thereof, or sooner, provide for the renewal, extension, replacement, exchange, or refunding thereof by new bonds issued with priority of lien, at a rate not exceeding fifteen thousand dollars per mile of the mileage of the issuing company, the said party of the first part, its successor or successors, shall have the right to substitute with said Trustee equal and corresponding amounts of such new bonds in the place and stead of any of the said deposited bonds which may be so renewed, replaced, exchanged or refunded.

Seventh. In case default shall be made by the party of the first part in the payment of the principal of any of the said bonds when the same may become due according to the tenor and effect thereof, and such default shall continue for the period of six months after payment of such principal shall have been duly demanded, or if default shall be made in payment of any interest upon said bonds when the same may become due and payable according to the tenor and effect thereof, and such default shall continue for the period of six months after such interest shall have been duly demanded, then and in either of said cases it shall be lawful for the said Trustee, and upon the written request of a majority in interest of the holders of all of said bonds then outstanding, and an adequate indemnity against all costs, expenses and liability to be incurred in executing this article, it shall be the duty of said Trustee to enter into and upon and take possession of the said main, branch, and leased lines of railway property, premises, and franchises hereby mortgaged and conveyed, and to use, manage, control and operate the same by its duly appointed agents and servants to the best advantage, and collect, receive, and take all the rents, profits, tolls, and revenues thereof, and after deducting the cost and expense of maintaining and operating said railways, or incurred in the management thereof, including a reasonable compensation for its own services as Trustee, and the taxes, insurance, and interest on bonds, or other claims or indebtedness, if any, having priority to the lien of this mortgage, in the order of such priority, to apply the moneys derived as aforesaid to the payment of the interest due and unpaid on said bonds hereby secured; or, in case the principal of

said bonds be then due, and to apply said moneys without preference, priority, or distinction of one bond over another, to the payment, *first*, of the interest due and unpaid on said bonds, and, *second*, to the payment of the principal of said bonds in full if said proceeds be sufficient thereto, but if not, then *pro rata*. And in case the said moneys arising and received as aforesaid shall be sufficient to the payment of the said specified costs, expenses, charges, taxes, insurance, priorities, interest and principal which may be payable as aforesaid, the said Trustee shall forthwith surrender, deliver up, and restore the full possession, control, use and enjoyment of the said railways, property, premises and franchises, together with any and all surplus or remainder of said moneys and proceeds, if such there be, to the said party of the first part, its successor, successors, or assigns.

Eighth. And in case default shall be made in the payment of any interest to accrue on any of said bonds when the same may become due and payable, and such accrued interest shall remain in arrears for six months after it shall have been duly demanded, it shall be lawful for said Trustee, and on the written demand of a majority in interest of the holders of all of the said bonds at such time outstanding, it shall be the duty of said Trustee to declare the whole principal of such bonds, with all interest accrued and unpaid thereon, to be due and payable; and upon such declaration by said Trustee, and due notice in writing thereof, and of said written demand of said bondholders, to the said party of the first part, the said principal and accrued interest shall become and be due and payable, or, in case default shall be made in the payment of the principal of said bonds when the same shall become due and payable according to the tenor and effect thereof, and continue for six months after due demand, then, and in either of said cases, it shall be lawful for said Trustee, and upon the written request of a majority in interest of the holders of all of said bonds then outstanding, and an adequate indemnity against all costs, expenses and liabilities to be incurred in executing this article, it shall be the duty of said Trustee, with or without entry, to proceed to sell, subject to all claims or liens having lawful priority to this mortgage, if any, the said main, branch and leased lines of railway, premises, property, rights, franchises, and deposited bonds hereinbefore described and hereby mortgaged and conveyed, or so much thereof as may be requisite to provide for the payment of the said principal and interest due on said bonds, and the necessary costs and

charges of executing this article, to the highest bidder at public auction in the city of Richmond, in the State of Virginia, after giving at least ninety days' notice of the time, place, and terms of such sale, and of the specific property to be sold, by publication one time in each consecutive week in two newspapers of general circulation, and one of which shall be published in the State of Virginia and one in the city of New York; and after such notice the said Trustee may make said sale in accordance therewith, or may adjourn the same to a subsequent date, whereon said sale shall be made, upon like notice published in like manner; and upon the completion of said sale shall execute and deliver to the purchaser or purchasers of said property, or any part thereof which may be so sold, good and sufficient conveyances and assignments in law for the same, and deliver possession thereof free of all and every the trusts and lien hereby created and granted, and without any liability on the part of said purchaser or purchasers for the proper application of the purchase money. And after deducting from the proceeds of said sale all expenses connected therewith, and all expenses, advances, and liabilities incurred by said trustee in operating said railways, including a reasonable compensation for its own services, and all taxes, claims, and liens, if any, prior or superior to the indebtedness hereby secured and lien hereby created, the said Trustee shall apply the residue of the proceeds of said sale, first, to the payment, ratably, of the interest, in the order of the maturity of the coupons therefor, and second, to the payment of the principal of the bonds hereby secured; and if, after the payment in full of the accrued interest and principal of said bonds, as aforesaid, any surplus of said proceeds or any of said deposited bonds shall remain in the hands of said Trustee, the same shall be paid over and delivered to the said party of the first part, its successor, successors, or assigns.

Ninth. In case of the sale of the said property hereby conveyed, or any part thereof, and whether by the said Trustee as aforesaid or under judicial process, the holders of the bonds secured hereby, or any of them, or the said Trustee on behalf of said bondholders, shall have the right to purchase upon equal terms with other persons; and any purchaser or purchasers at said sale, after making a cash payment sufficient to cover the costs and expenses of said sale and all other charges required by said Trustee to be provided for in actual cash, shall have the right to deliver and pay to said Trustee, as cash towards the payment of the residue of the purchase money, any of said bonds or

coupons to or towards the payment whereof the net proceeds of such sale may be legally applicable, the amount of such bonds or coupons, so to be paid in, to be determined and fixed by the said Trustee, and at a sum which shall, upon a proper distribution and accounting, be at least equal to the share or proportion payable out of the net proceeds of said sale to the holder or holders of such bonds and coupons.

Tenth. The said party of the first part, its successor, successors, or assigns, at all times during the existence of this trust, shall have the right to sell, release, and convey any lands, tenements, or hereditaments hereby conveyed, which it, or they, may cease to use, or deem it expedient to abandon for corporate purposes by reason of any change of location of depots, station houses, shops, warehouses, or other buildings, structures, or yards, or of railway tracks, or for any other good reason, and to sell, exchange, or otherwise dispose of any machinery, rolling-stock, tools, implements, material or other personal property which may become unserviceable or unnecessary to the use of said railways, the net proceeds of such sale or sales to be invested in other property, which, when bought, shall be subject to the trusts herein declared.

Eleventh. In case the said Central Trust Company of New York shall at any time desire to resign said office of trust or shall for any other reason cease to be the trustee, or in case of the death, removal by a court of competent jurisdiction, or incapacity to to act of the present or any future trustee, or in case a vacancy in the office of trustee shall occur from any cause whatever, the Board of Directors of the said party of the first part, or its successor, successors or assigns, shall have the power to fill such vacancy by the appointment of a solvent trust company in the city of New York to act as and be trustee hereunder; and in case the said Board of Directors of the said party of the first part, its successor, successors or assigns, do not make such appointment within sixty days after such vacancy occurs, the holders of a majority in interest of all of the said bonds at such time outstanding may apply to any court in the State of Virginia having jurisdiction in the premises for the appointment of a trustee or trustees to fill such vacancy; and thereupon and in either case such new trustee or trustees shall, when appointed as aforesaid, be vested with all the estate, right, title, interest, powers and duties hereby conveyed to and vested in the said Central Trust Company of New York without any further assurance or conveyance of the same, it being hereby mutually

agreed by and between the parties hereto that the said trustee herein named, or its successor in said trust, shall not in any manner be responsible otherwise than for its own default or misconduct.

In witness whereof, the said The Richmond and Danville Railroad Company has caused its corporate seal to be hereto affixed, and these presents to be signed by its President, and attested by its Secretary, in pursuance of a resolution of its Board of Directors, on the day and year herein first above written.

And at the same time, and for the purpose of evidencing its acceptance of the trusts herein and hereby created, the Central Trust Company of New York has likewise caused its corporate seal to be hereto affixed and these presents to be signed by its President and attested by its Secretary, in pursuance of a resolution of its Board of Directors.

THE RICHMOND AND DANVILLE RAILROAD
COMPANY.

{
Corpo-
rate
Seal.
}

By

A. S. BUFORD,

President.

Attest :

R. BROOKE,

Secretary.

CENTRAL TRUST COMPANY OF NEW YORK,

{
Corpo-
rate
Seal.
}

By

F. P. OLCOTT,

President.

Attest :

C. H. P. BABCOCK,

Secretary.

THE STATE OF VIRGINIA, }
City of Richmond, } ss.

Be it known that I, R. Brooke, a Notary Public within and for the city and state aforesaid, do hereby certify that on this the twentieth day of November, in the year one thousand eight hundred and eighty-six, before me person-

**Supplemental Agreement with Consolidated Mortgage—Part
of Exhibit 3.**

THE RICHMOND & DANVILLE RAILROAD CO.

TO

CENTRAL TRUST COMPANY OF NEW YORK.

Supplemental Agreement

CONSOLIDATED FIVE PER CENT. GOLD BONDS.

Secured by Mortgage,

October 22d, 1886.

This indenture, made this 30th day of April, 1888, by and between the Richmond and Danville Railroad Company, a corporation created by and organized under the laws of the State of Virginia, party of the first part, and the Central Trust Company of New York, as trustee, party of the second part, Witnesseth:

Whereas, the said Richmond and Danville Railroad Company did, on the 22nd day of October, 1886, make, execute and deliver to the Central Trust Company of New York, trustee, its certain consolidated mortgage to secure the payment of certain of its bonds, to be known as its consolidated mortgage five per cent. gold bonds;

And whereas, on the 13th day of April, 1888, the Board of Directors of the said party of the first part unanimously adopted the following series of preambles and resolutions in respect to the said mortgage:

Whereas, the consolidated mortgage executed and delivered by this company on the twenty-second day of October, 1886, to the Central Trust Company of New York, trustee, provides for an issue of eleven million two hundred and twenty thousand dollars of bonds, to be retained and reserved by said trustee for the sole purpose of taking up, refunding, exchanging or providing for certain outstanding bonds of this company, and of the Northwestern North Carolina Railroad Company, therein designated, and

Whereas, the said consolidated mortgage also provides for the issuance of an additional amount of bonds practically unlimited, except that the same shall not in the aggregate exceed fifteen thousand dollars per mile, of the mileage of properties and railroads at the date of said mortgage or any time thereafter owned and controlled by this company, and

Whereas, the said consolidated mortgage also pro-

vides for a still further and additional issuance of bonds at the rate of twenty-five hundred dollars per mile for the purpose of purchasing equipment, and of which bonds, to the amount of three hundred and fifty thousand dollars, have been issued, and

Whereas, the said consolidated mortgage provides that "in case any of the first consolidated six per cent. gold bonds of the said Western North Carolina Railroad Company shall be deposited under the provisions of this indenture, as aforesaid, the said trustee shall certify and issue to the said party of the first part, its successor or successors, fifteen thousand dollars of said consolidated mortgage gold bonds issued hereunder for each and every twelve thousand five hundred dollars of said first consolidated six per cent. Western North Carolina Railroad's bonds so deposited," and

Whereas, it is the unanimous judgment and opinion of the Board of Directors that the interests of this company, the grantor in said consolidated mortgage, and of the holders of bonds issued thereunder, or otherwise by this company, that the terms and provisions of said consolidated mortgage in, the respects aforesaid, be modified, restricted and altered to the intents and purposes mentioned and specified in the following resolutions.

Therefore, it is

Resolved, That the best interests of this company and of the holders of its securities will be promoted and subserved by so changing the provisions of its consolidated mortgage, dated the twenty-second day of October, 1886, as to revoke and wholly annul the provision therein made and contained for an application of any of the bonds issued thereunder to taking up, refunding, exchanging or providing for the payment of first mortgage bonds of the Northwestern North Carolina Railroad Company, dated October 24th, 1872, and by modifying the provision in said consolidated mortgage for the retention and reservation by the trustee thereof of bonds issued thereunder, so as to restrict said reservation of bonds to the amount of ten million seven hundred and twenty thousand dollars, instead of eleven million two hundred and twenty thousand dollars, as now therein provided, and by the application by said trustee of said reserved amount of bonds solely and only to the purpose of taking up, refunding, exchanging or providing for the payment of the six per cent. gold bonds issued under the mortgage deed of trust of this company, dated October 5th, 1874, and of the debenture bonds issued under the mortgage deed of trust of this company, dated February 1st, 1882.

Resolved, that the best interests, as aforesaid, will likewise be subserved and promoted by so altering and modifying the provisions of said consolidated mortgage as to revoke and annul all or any power or authority to issue any further or additional bonds for the purchase of equipment, in excess of the amount of three hundred and fifty thousand dollars already issued.

Resolved, that the best interests, as aforesaid, will likewise be subserved and promoted by modifying and changing the provisions of said consolidated mortgage so as to limit and restrict the total amount of bonds authorized to be issued thereunder for any and every purpose or application to the amount of fourteen million five hundred thousand dollars in the aggregate.

Resolved, that the best interests, as aforesaid, will likewise be subserved and promoted by modifying and changing the provisions of said consolidated mortgage so as to revoke and wholly annul all or any power or authority to issue any bonds thereunder in exchange for first consolidated bonds of the Western North Carolina Railroad Company.

Resolved, that the president be, and hereby is, fully authorized and empowered to do all acts and take all measures necessary to secure and effect the aforesaid changes, alterations and modifications of the terms and provisions of the said consolidated mortgage, and to such end and purpose to cause to be duly executed, signed, sealed with the corporate seal and delivered any and all instruments of writing requisite in the premises.

Now, for the purpose of carrying into effect the said resolutions, the parties hereto have covenanted and agreed, and do hereby covenant and agree as follows :

First. That all the provisions of the said mortgage providing for the application of any of the bonds issued thereunder, to taking, refunding, exchanging or providing for the payment of first mortgage bonds of the Northwestern North Carolina Railroad Company, dated October 24th, 1872, be, and the same are, hereby revoked and wholly annulled.

Second. That the provisions of the said consolidated mortgage giving power or authority to issue any bonds thereunder in exchange of the first consolidated mortgage bonds of the Western North Carolina Railroad Company, be, and the same are, hereby revoked and wholly annulled.

Third. That the provisions of the said consolidated mortgage for the retention and reservation, by the party of

the second part, of bonds issued thereunder, be, and the same are, hereby modified so as to restrict said reservation of bonds to the aggregate amount of ten million, seven hundred and twenty thousand dollars, instead of eleven million, two hundred and twenty thousand dollars, as now therein provided, and that the said amount of ten million, seven hundred and twenty thousand dollars of bonds so reserved be applied, by the said trustee, solely and only to the purpose of taking up, refunding, exchanging or providing for the payment of the six per cent. gold bonds issued under the mortgage deed of trust of the Richmond and Danville Railroad Company, dated October 5th, 1874, and of the debenture bonds and coupons attached thereto issued under the mortgage deed of trust of this company, dated February 1st, 1882.

Fourth. That the provisions of the said consolidated mortgage be so altered and modified as to revoke and wholly annul all or any power or authority to issue after the day of the date hereof any further or additional bonds for the purchase of equipment in excess of the amount of hundred and fifty thousand dollars already issued, the issue of which to that extent is hereby ratified and approved.

Fifth. That the provisions of the said consolidated mortgage be modified and changed so as to limit and restrict the total amount of bonds authorized to be issued thereunder for any and every purpose or application, to the amount of fourteen million, five hundred thousand dollars, in the aggregate, that amount being hereby fixed and determined as the maximum amount of bonds to be issued under the mortgage, inclusive of the ten million, seven hundred and twenty thousand dollars of bonds hereinbefore mentioned.

Sixth It is expressly agreed between the parties hereto that the changes, modifications, alterations and restrictions herein specified shall be in full force and effect from and after the day of the date hereof, but that, except as herein specifically changed, modified, altered and restricted, the terms, provisions and conditions of the said consolidated mortgage and of the bonds issued thereunder, shall not be regarded as, in any other respect, changed, modified, altered and restricted.

In witness whereof the said The Richmond and Danville Railroad Company has caused its corporate seal to be hereto affixed, and these presents to be signed by its president and attested by its secretary, in pursuance of a resolution of its board of directors, on the day and year first herein above written.

And, at the same time, and for the purpose of evidencing its acceptance of the trusts herein and hereby created, the said Central Trust Company of New York has likewise caused its corporate seal to be hereto affixed and these presents to be signed by its president and attested by its secretary, in pursuance of a resolution of its Board of Directors.

THE RICHMOND AND DANVILLE
RAILROAD COMPANY,
By GEO. S. SCOTT, President.

Attest :

A. J. RAUH, Ass't Secretary.

CENTRAL TRUST COMPANY
OF NEW YORK,
By FREDERICK P. OLCOTT, President.

Attest :

C. W. P. BABCOCK, Secretary.

THE STATE OF NEW YORK.)
City and County of New York,) ss :

Be it known that I, George W. Vultee, a notary public, within and for the city and State aforesaid, do hereby certify that on this, the thirtieth day of April, in the year one thousand eight hundred and eighty-eight, before me personally came George S. Scott, whose name is signed to the foregoing instrument, bearing date the thirtieth day of April, A. D. 1888, as president of the Richmond and Danville Railroad Company, and who being by me first duly sworn, did depose and say : That he is the president of the Richmond and Danville Railroad Company, the corporation herein ; that the seal affixed hereto is the corporate seal of said corporation, and was thereto affixed by order of its Board of Directors ; and that by like order and authority he signed the name of the said corporation and his own as its president thereto, and acknowledged the same to be his act and deed and the act and deed of the said The Richmond and Danville Railroad Company, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal on the day and year first above written.

GEORGE W. VULTEE,
Notary Public (49),
C. & C. of N. Y.

[L. s.]

STATE OF NEW YORK. }
City and County of New York, } ss :

Be it known that I, George W. Vultee, a notary public within and for the city and State of New York, do hereby certify that on this, the thirtieth day of April, in the year one thousand eight hundred and eighty-eight, before me personally came Frederic P. Olcott, whose name is signed to the foregoing instrument bearing date the thirtieth day of April, 1888, as president of the Central Trust Company of New York, and who being by me first duly sworn, did depose and say : That he is the president of the Central Trust Company of New York, the corporation herein ; that the seal affixed hereto is the corporate seal of said corporation, and was thereto affixed by order of its Board of Directors ; and that by like order and authority he signed the name of the said corporation and his own as its president thereto and acknowledged the same to be his act and deed and the act and deed of the said Central Trust Company of New York, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal on the day and year first above written.

GEORGE W. VULTEE,
Notary Public (49),
C. & C. of N. Y.

[L. s.]

EXHIBIT 4.

EQUIPMENT SINKING FUND FIVE PER CENT. MORTGAGE
OF THE
RICHMOND AND DANVILLE RAILROAD COMPANY
TO THE

CENTRAL TRUST COMPANY OF NEW YORK, TRUSTEE.

Indenture, dated this third day of September, 1889, by and between the Richmond and Danville Railroad Company, a corporation of the State of Virginia, hereinafter called "The Danville Company," party of the first part, and the Central Trust Company of New York, a corporation of the State of New York, hereinafter called "The Trustee," party of the second part.

Whereas, The Danville Company has in its possession and use certain railroad equipment and rolling stock of the original cost of one million seven hundred and twenty-two thousand two hundred and twenty dollars (\$1,722,220), acquired under certain car trust leases and contracts (copies

of which have been deposited with The Trustee), upon which, on the day of the date hereof, there are outstanding and unpaid, amounts not yet due, and yet to accrue, to the total sum of one million three hundred and thirty-seven thousand two hundred and twenty-five dollars (\$1,337,225), such car trust leases and contracts, and such payments being as follows:

Railroad Equipment Co. : Series B, 116, dated September 1st, 1887. Total amount, \$784,000. Amounts to accrue payable in 33 quarterly payments to October 1st, 1897,	\$ 621,225
Richmond and Danville Equipment Trust : The Fidelity Insurance Trust and Safe Deposit Co. of Philadelphia, Pa., trustee, dated May 12, 1886. Total amount, \$367,200. Amounts to accrue in 27 quarterly payments to May 1, 1896, \$9,000 each,	243,000
Richmond and Danville Equipment Trust : Series B. Fidelity Insurance Trust and Safe Deposit Company, Philadelphia, trustee, dated November 1, 1887. Principal, \$237,210. Amounts to accrue payable in 27 quarterly payments to May 1, 1896,	185,000
Richmond and Danville Equipment Trust : Series 2. Finance Company of Pennsylvania, trustee, dated August 30, 1888. Principal, \$333,710. Amounts to accrue in 36 quarterly payments of \$8,000 each,	288,000
	<hr/>
	\$1,337,225
	<hr/>

And whereas, The Danville Company requires the use of additional railroad equipment and rolling stock for the operation of its railroad, as well as to be secured in the continued use of the railroad equipment and rolling stock covered by said car trust leases and contracts, and it is proposed to provide for such use, and for the ultimate ownership of all such railroad equipment and rolling stock by The Danville Company, by means of the bonds and proceeds of bonds to be issued under this deed of trust or mortgage.

And whereas, it has been agreed that this deed of trust or mortgage shall be created to secure the purchase money for the railroad equipment and rolling stock to be hereafter acquired by The Trustee for the use of The Danville Company, and the money hereafter provided for the pur-

chase or acquisition by The Trustee of the car trust obligations and securities hereinbefore recited.

And whereas, at the meeting of the stockholders of the Danville Company, held at the principal office of said company in the city of Richmond, in the State of Virginia, on the 20th day of March, 1889, it was unanimously resolved:

“That the Board of Directors of this company be and are hereby authorized to issue equipment trust bonds for the sum of two million five hundred thousand dollars, bearing such rate of interest and payable at such time as the Board of Directors may determine, and to secure the same by deed of trust, mortgage or other instrument in such form as the Board of Directors may determine, upon the equipment thus purchased or other property of the company;

Resolved, That in order to accomplish the objects of these resolutions, full, ample and complete authority is hereby given to said Board of Directors to execute in such manner as may be deemed necessary, each, every and all legal instruments that it may become requisite to make and execute, in order to carry out the objects aforesaid.”

And whereas, at a meeting of the Board of Directors of the Danville Company, held on the fourteenth day of August, 1889, the following preamble and resolutions were unanimously adopted:

“Whereas, in pursuance of the resolutions heretofore adopted by the stockholders of this company, and in order to provide for the use and ultimate ownership by this company of additional railroad equipment and rolling stock necessary for the operation of its railroad, and for its continued use and ultimate ownership of certain railroad equipment and rolling stock now covered by Car Trust leases and contracts, and to secure the payment of the purchase money of such additional railroad equipment and rolling stock, and of the money necessary to purchase or acquire the outstanding Car Trust obligations and securities issued under said Car Trust leases and contracts, it is necessary for this company to issue its bonds to the limit of two million five hundred thousand dollars (\$2,500,000), to be secured upon all the railroad equipment and rolling stock now owned by this company or in which it has any interest, and upon all the equipment and rolling stock, and the Car Trust obligations and securities for the delivery of the same, which may be purchased or acquired by means of said bonds or their proceeds, and upon the railroad, all other real and personal property, franchises and income of this company.

“Therefore, be it resolved, that this company make and issue its bonds to the limit of two million five hundred thousand dollars (\$2,500,000), payable in gold coin of the United States of the present standard of weight and fineness, to be dated on the third day of September, 1889, and to become due on the first day of September, 1909, and bearing interest from the first day of September, 1889, at the rate of five per cent. per annum, payable semi-annually in like gold coin, in the city of New York, on the first days of March and September in each year, until the principal sum is paid, each bond to be for one thousand dollars, or for some multiple thereof, exchangeable for bonds of that denomination, or at the option of the holders, some or all of said bonds to be payable, principal and interest, in equivalent amounts in sterling currency, in the city of London, all said bonds to be sealed with the corporate seal of the company, attested by its secretary, and to be signed in the corporate name of this company by its president, and each bond for one thousand dollars or its equivalent in sterling currency, to have interest coupons annexed, authenticated by the engraved *fac simile* of the signature of its treasurer, and to be duly certified by the trustee of the deed of trust or mortgage securing equally all of said bonds and coupons, the bonds, coupons and certificate thereto to be substantially in the forms following:

(FORM OF BOND.)

UNITED STATES OF AMERICA,

\$1,000.

STATE OF VIRGINIA.

\$1,000

No. ———.

RICHMOND AND DANVILLE RAILROAD
COMPANY.

EQUIPMENT SINKING FUND FIVE PER CENT. GOLD BOND.

Limit of Issue, \$2,500,000.

Principal payable in gold coin from sinking fund within twenty years.

Interest payable half yearly on the first days of March and September, in the cities of New York and London.

The Richmond and Danville Railroad Company hereby binds itself to pay to the bearer or registered owner hereof, at its agency in the city of New York, on the first day of September, 1909, unless this bond be sooner redeemed, one thousand dollars in gold coin of the United States, of the present legal standard of weight and fineness, and to pay

interest thereon, in like coin, at the rate of five per cent. per annum from the first day of September, 1889, upon presentation and surrender at the agency of said company in the city of New York, of the annexed coupons, as they severally become due, on the first days of March and September, in each year, until said principal sum is paid; or, at the option of the holder, at its agency in the city of London, to pay the equivalent amounts in sterling currency.

This bond is subject to redemption on any interest day at the par value thereof, with accrued interest, from a sinking fund, payable semi-annually, and amounting each year, with the annual interest on the outstanding bonds, secured by the deed of trust or mortgage herein described, to nine per cent. of the principal sum of all such bonds previously issued, whether any thereof shall have been redeemed or not.

Drawings of bonds for redemption will take place in the city of New York, at the office of the trustee of the said deed of trust or mortgage, on the first Wednesday of December and June of each year. The denoting numbers of the bonds will be advertized on or before the first day of the month next after the drawing in two daily journals published in the city of New York. No drawn bond will carry interest after the day fixed for its redemption.

This is one of the series of bonds, of like amount, tenor and date, limited to two million five hundred thousand dollars, numbered consecutively from one to twenty-five hundred, both inclusive, all equally secured in the manner set forth in a deed of trust or mortgage, dated the third day of September, 1889, made between the Richmond and Danville Railroad Company and the Central Trust Company of New York, trustee, under which said trustee acquires, owns and holds in trust, on behalf of the owners of said bonds, railroad equipment and rolling-stock furnished for said Richmond and Danville Railroad Company, and Car Trust obligations based on railroad equipment and rolling-stock, also in use by said company. Said bonds are further secured by mortgage of the railroad, equipment, real and personal property, franchises and income of the Richmond and Danville Railroad Company.

Upon default of said Richmond and Danville Railroad Company for ninety days in the payment of any interest on any of said bonds, or upon its default in certain other respects, the principal of all of said bonds may become due as provided in said deed of trust or mortgage.

The principal of this bond may be registered on the books of the Richmond and Danville Railroad Company, at its agency in the city of New York, and the registration

thereof, noted hereon, after which no transfer thereof, except on said books, shall be valid until after registered transfer to bearer, when the principal hereof will again become transferable by delivery.

The coupons hereto annexed will always be transferable by delivery.

This bond will not become valid until the certificate endorsed hereon has been signed by the trustee of said deed of trust or mortgage.

In Witness Whereof, the Richmond and Danville Railroad Company has caused its corporate seal to be hereto affixed and attested by its secretary, and this bond to be signed by its president, and the name of its treasurer to be engraved in fac-simile on the interest coupons hereto attached, the third day of September, in the year one thousand eight hundred and eighty-nine.

RICHMOND AND DANVILLE
RAILROAD COMPANY,

by

[L. S.]

President.

Attest :

Secretary.

(FORM OF COUPON.)

\$25.

\$25.

On the first day of , The Richmond and Danville Railroad Company will pay to the bearer, at its agency, in the city of New York, twenty-five dollars in gold coin of the United States of the present legal standard of weight and fineness (or the equivalent amount in sterling currency at its agency in the city of London), being six months interest on its consolidated equipment mortgage bond No. .

Treasurer.

(FORM OF TRUSTEE'S CERTIFICATE.)

This bond is hereby certified to be one of the series of bonds described in the deed of trust or mortgage herein referred to.

CENTRAL TRUST COMPANY OF NEW YORK,

Trustee.

By

Vice-President.

Resolved, that for the purpose of securing the payment of the principal of all of said bonds and the interest which shall accrue thereon, this company shall execute and deliver a deed of trust or mortgage to the Central Trust Company of New York, trustee, covering all the railroad equipment and rolling stock and all the lease warrants, car trust certificates, obligations and securities at any time purchased or acquired by said Trustee, with the bonds, or the proceeds of bonds, issued under said deed of trust or mortgage, each locomotive and car so acquired to be marked 'Owned by Central Trust Company of New York, Trustee Richmond and Danville Railroad Company Equipment Mortgage'; also covering all the railroad equipment and rolling stock now owned by this company, or which this company may be entitled to use under any of the outstanding car trust leases and contracts made by this company; and all the right, title and interest which this company now has or may hereafter acquire in and to the contract obligations and securities now outstanding and issued by this company under car trust leases and contracts. Said deed of trust or mortgage shall also embrace all the railroad and other real and personal property, franchises and income of this company. Such deed of trust or mortgage to be for the benefit and security of the holders of all such bonds at any time outstanding without priority, preference or distinction as to lien or otherwise, so that each bond issued thereunder shall have the same right, privilege or lien as if all said bonds had been executed and delivered simultaneously with the execution and delivery of said deed of trust or mortgage.

Resolved, further, that the president is hereby authorized on behalf of this company, and as its act and deed, to affix its corporate seal to the said bonds and to said deed of trust or mortgage, and to sign the same as such president, and to cause such seal when so affixed to be duly attested by the Secretary, and to acknowledge and deliver said deed of trust or mortgage when so executed, and to cause the same to be duly recorded.

Resolved, further, that fourteen hundred and seven of said bonds, amounting at the par value thereof to the sum of one million four hundred and seven thousand dollars (\$1,407,000), shall be set apart and appropriated to be used by the Trustee for the following purposes only: The Trustee shall sell the same under the direction of this company, and shall apply the proceeds of such sale, or may apply the bonds themselves without sale by exchange thereof, if practicable, in payment of or exchange for the accruing payments hereafter to mature for the present equipment

of this company, the same being part or all of the equipment purchased and held by this company under any of its existing car trust leases or contracts, or otherwise in the acquisition of any of said car trust leases or contracts, of which the total amount now outstanding is one million three hundred and thirty-seven thousand two hundred and twenty-five dollars (1,337,225).

Resolved, further, that the residue of said bonds, including any bonds of the \$1,407,000 reserved remaining after all car trust leases or contracts have been retired or purchased, shall, after execution and certification, be sold under the direction of this company, and the proceeds thereof applied by the trustee to the purchase of railroad equipment and rolling stock as aforesaid."

And whereas, the Richmond and Danville Railroad Company, in pursuance of said resolutions, and of the laws under which it is incorporated, and of such other lawful authority as it has therefor, is about to execute, issue and negotiate two thousand five hundred (\$2,500) bonds for one thousand dollars each in the form hereinbefore set forth to be secured hereby.

Now, therefore, in consideration of the premises, and of the sum of one dollar to it paid by the said Central Trust Company of New York, the receipt whereof is hereby acknowledged, and to secure the payment of the principal and interest of all the bonds issued hereunder according to the tenor and effect thereof, without preference or priority, and equally and ratably, the said Richmond and Danville Railroad Company doth hereby grant, bargain, sell, convey, assign, transfer and set over unto the said Central Trust Company of New York, and its successor or successors in the trusts herein and hereby created, and its and their assigns, the following described real and personal property—that is to say:

All and singular the entire railway of the said Richmond and Danville Railroad Company, extending from and including the depot lot, in the city of Richmond, to the town of Danville, in the State of Virginia, and all its lateral roads or branches, with all the lands attached and belonging to said railway and branches, and used in connection therewith, including all depot lots, depots, wharves, docks, warehouses, machine-shops, bridges, and all other structures and their appurtenances, together with all the company's engines, cars, rolling-stock, equipment, machinery, implements and materials, whether the said cars, engines and rolling-stock are now used upon the Richmond and Danville Railroad, or any of its leased lines, or any of its connecting lines, and all other property, works and ef-

fects of the said Richmond and Danville Railroad Company appertaining to, or used in connection with, the said railway and branches, or in operating the same, wherever the same may be situated, or in whatever manner the same may be held, except the branch road extending from the main line of the Richmond and Danville Railroad in the city of Manchester, to a point on the James river opposite to that part of the city of Richmond called Rocketts, and except the real estate, wharves, warehouses and terminal facilities owned by the Richmond and Danville Railroad Company on or near the James river opposite to Rocketts, which are not intended to be included in this deed.

Also, all property and effects so pertaining to, and to be used in connection with, said railway and in operating the same, which the said company may hereafter at any time acquire.

Also the corporate rights, privileges and franchises of said company of every kind, now owned, or which may hereafter be acquired.

Also, the leasehold and all the rights acquired by the Richmond and Danville Railroad Company in and to the Richmond, York River and Chesapeake Railroad, by a certain contract, made on the 9th day of July, eighteen hundred and eighty-one, between the said Richmond, York River and Chesapeake Railroad Company and the said Richmond and Danville Railroad Company, except the interest acquired by the Richmond and Danville Railroad Company, under the said contract, in the stock of the Baltimore, Chesapeake and Richmond Steamboat Company, and in the real estate, warehouses, wharves and terminal facilities at West Point, owned by the Richmond, York River and Chesapeake Railroad Company, which are not intended to be included in this deed. Nor does this deed include, nor is it intended to include, any real estate, warehouses, wharves or terminal facilities which are now or may hereafter be owned at West Point by the Richmond and Danville Railroad Company.

Also, the right, title and interest of the said party of the first part in and to the Piedmont Railroad, and all the works and other property belonging to the Piedmont Railroad Company, and used in connection with said railroad in operating the same, and the leasehold of said railroad and its works, property and franchises, for and during the term of eighty-six years from and after the twentieth day of February, eighteen hundred and seventy-four, acquired by deed of lease, executed by the said Piedmont Railroad Company to the said party of the first part, bearing date the fourteenth day of September, eighteen hundred and seventy-four.

Also, the leasehold of the said party of the first part in the North Carolina Railroad, and the property, real and personal, used in connection therewith, and in operating the same, together with all the appurtenances of every sort thereto belonging, which were conveyed to the said party of the first part by the North Carolina Railroad Company, by deed bearing date the eleventh day of September, eighteen hundred and seventy-one, and duly recorded in the county of Alamance, in the State of North Carolina.

Also all the right, title, interest and property of the party of the first part in and to the line of railway extending from Charlotte, in the State of North Carolina, to the city of Atlanta, in the State of Georgia, and the works, property and franchises thereto pertaining, held by the said party of the first part, under certain agreements contained in a contract made on the twenty-sixth day of March, eighteen hundred and eighty-one, between the Richmond and Danville Railroad Company, party of the first part, and the Atlanta and Charlotte Air Line Railway Company, party of the second part, whereby the right is secured to the Richmond and Danville Railroad Company to perpetually control, manage and operate the said Atlanta and Charlotte Air Line Railway and all the works, property, franchises and income thereof.

Also all the right, title and interest of the said party of the first part in and to the line of connecting railway, extending from the depot of the party of the first part, in the city of Richmond, to the depot of the Richmond, York River and Chesapeake Railroad Company in said city, not including, however, a certain lot of ground with a brick tenement thereon, belonging to the said party of the first part, situated on Dock street, in the city of Richmond, and known as the Palmer lot, the said lot not being used in connection with the said railway nor for railroad purposes.

Also all the leasehold right, title and interest of the said party of the first part in and to the following mentioned and designated properties—that is to say:

First. In and to the Virginia Midland Railway and all its branches, leasehold estates and rights, equipment, appurtenances, assets, property and franchises, as the same are leased, assigned and conveyed to the said party of the first part by the said The Virginia Midland Railway Company by an indenture of lease dated and executed the fifteenth day of April, A. D. 1886.

Second. And in and to the Western North Carolina Railroad, and all its branches, extensions, leasehold estates and rights, equipment, assets, property and franchises, as

the same are leased, assigned and conveyed to the said party of the first part by the said Western North Carolina Railroad Company by an indenture of lease dated and executed the first day of May, A. D. 1886.

Third. And in and to the Charlotte, Columbia and Augusta Railroad and all its branches, leasehold estates and rights, equipment, assets, property and franchises, as the same are leased, assigned and conveyed to the said party of the first part by the said Charlotte, Columbia and Augusta Railroad Company by an indenture of lease dated and executed the first day of May, A. D. 1886.

Fourth. And in and to the Columbia and Greenville Railroad and all its branches, leasehold estates and rights, equipment, assets, property and franchises, as the same are leased and conveyed to the said party of the first part by the said The Columbia and Greenville Railroad Company by an indenture of lease dated and executed the first day of May, A. D. 1886.

Fifth. And in and to the Georgia Pacific Railway, and all its branches, leasehold estates and rights, as the same are leased and conveyed to said party of the first part by the said the Georgia Pacific Railway Company by lease dated and executed December 9, 1888.

It being fully understood and agreed that each and every of the said five last mentioned leasehold estates of the said party of the first part, and all the rights, title, interest, claim or demand, either at law or in equity, vested in the said party of the first part by virtue of each, every and ad of the said five several indentures of lease last above mentioned and described, shall, *ipso facto*, by these presents, become subject to the lien of this mortgage, and that the said party of the first part shall and will sign, seal, execute and deliver to the said party of the second part, or its successor in the trusts hereinafter expressed and declared, all such other and further transfers, assignments, conveyances or assurances as it shall be advised may be necessary or proper to vest in the said party of the second part, as trustee as aforesaid, the leasehold rights, titles and interests which are now vested in the said party of the first part by virtue of the said five several indentures of lease last above mentioned and designated, and that all the railway, equipment, leasehold estates, franchises and property in this indenture described are hereby conveyed subject to all existing encumbrances thereon.

To have and to hold, all and singular, the said above described property, premises, works, leases, rights, fran-

chises and appurtenances unto the said party of the second part, its lawful successor or successors, and its or their assigns forever, in trust, nevertheless, for the equal pro rata benefit and security of all the holders of all the said bonds secured hereby, without any preference or priority by reason of priority in time of issue thereof, and for the objects, uses and purposes hereinafter declared and expressed.

Provided, however, and upon condition nevertheless, that, upon payment in full at maturity or otherwise, of the bonds and coupons hereby secured, this indenture and all the obligations and liabilities hereby created shall cease, determine and be of no further force or effect whatever.

And in further consideration of the premises, and of the mutual agreements hereinafter set forth, and of one dollar paid by each party to each of the others, it is hereby expressly agreed by and between the parties hereto, each covenanting for itself, its successors and assigns, that the railroad equipment and rolling stock, lease warrants, Car Trust obligations and securities at any time held or acquired by The Trustee as provided in this indenture, are and shall be charged with the agreements, and are and shall be held by The Trustee upon the trusts and for the uses and purposes following :

Article First. The Danville Company, in consideration of the undertakings and agreements of The Trustee herein set forth, hereby agrees forthwith to execute and issue in the form hereinbefore recited, and to deliver to The Trustee to be certified and used for the purposes hereinafter described, bonds of The Danville Company, intended to be secured hereby, to an amount not exceeding two million five hundred thousand dollars (\$2,500,000), and that the certificate of The Trustee upon any of said bonds to the effect that the bond is one of the series of bonds described in this deed of trust or mortgage, shall be conclusive evidence that such bond has been issued in accordance herewith and is entitled to the security hereof.

It is agreed between the parties that The Danville Company may negotiate the sale of any or all of the bonds authorized to be issued hereunder, for such prices and upon such terms as it shall deem best, and that The Trustee shall from time to time, upon the written order of the president or the Board of Directors of the Danville Company, certify and deliver any bonds, the sale of which has been so negotiated, upon receiving the moneys certified in such order to be the amount of net proceeds of the sale of said bonds, which moneys shall be held by The Trustee in trust for all

the holders of bonds issued hereunder as a special fund for the acquisition of railroad equipment or rolling stock, lease warrants, Car Trust obligations or securities as hereinafter provided.

Article Second. The Danville Company agrees to pay the principal of all bonds duly issued hereunder, according to the terms thereof, when the principal shall become or be declared due, upon surrender of the bonds so paid, and shall pay the interest thereon, according to the terms of the said bonds, until the principal is paid, without deductions from principal or interest for any taxes, assessments or governmental or other charges imposed on this deed of trust or mortgage, or on any bonds issued hereunder, or on the payments or obligations required by any of said bonds or by any provisions hereof, or on the property or franchises at any time covered hereby, The Danville Company agreeing to pay the same. As the coupons annexed to said bonds are paid, they shall be cancelled, and no purchase of any coupons nor any advance or loan thereon, nor redemption thereof, by or on behalf of The Danville Company, after the same have been detached from the bonds to which they belong, shall keep such coupons alive or preserve their lien upon any of said property.

Article Third. The Danville Company agrees that, until the payment of all the bonds secured hereby, it will, on or before the first days of March and September, in each year, beginning with the first day of March, 1890, pay to The Trustee a sum of money which, with the semi-annual interest on all said bonds then outstanding, shall equal four and one-half ($4\frac{1}{2}$) per cent. of the principal sum of all such bonds previously issued, whether any thereof shall have been redeemed or not, so that the payments so made shall amount each year to such sum as, with the annual interest on all said bonds then outstanding, shall equal nine per cent. of the principal sum of all such bonds previously issued, all money so paid to be a special sinking fund to be applied by The Trustee in a manner to be approved by The Danville Company, to the purchase of bonds secured hereby at the lowest price for which they can be obtained, not exceeding the par value thereof and accrued interest, or if enough of said bonds to exhaust the amount of any semi-annual payment into the sinking fund are not obtainable by The Trustee at or below the par value thereof, and accrued interest, within three months after such payment, then to be used by The Trustee in the redemption on the next interest day of bonds secured hereby and then outstanding at the par value thereof with accrued interest.

Whenever any of such bonds are to be redeemed, the president or other officer of The Trustee shall, on the first Wednesday of June, and on the first Wednesday of December, next preceding the day for redemption, draw by lot, at the office of The Trustee, in the city of New York, from the numbers of all such bonds then outstanding, the denoting numbers of so many bonds as are next to be redeemed. The drawing shall be made by The Trustee, who shall forthwith make and deliver a certificate of the denoting numbers so drawn to The Danville Company. Beginning on or before the first day of the month next after the drawing The Trustee shall advertise, at least once a week for four successive weeks in two daily journals of general circulation published in the city of New York, the denoting numbers so drawn, with notice that the bonds so numbered will be redeemed by the payment of the par value thereof with accrued interest, at the office of The Trustee, in the city of New York, on the day when interest on said bonds shall next become due, and that interest on such bonds will thereupon cease. If any of such bonds shall not be presented for redemption at the time so advertised, interest thereon shall thereupon cease. All bonds purchased or redeemed under the foregoing provisions shall forthwith be cancelled by The Trustee.

Article Fourth. The Danville Company agrees to keep an agency in the city of New York, while any bonds secured hereby are outstanding, for the payment of the principal and interest thereof, and an agency in the city of London for the payment of interest there, and shall keep at said agency in the city of New York books on which the transfer of the principal of any of said bonds shall, upon request, be registered without expense to the holder. Each registration of the principal of a bond shall be noted on the bond, after which no transfer thereof can be made, except on said books, until after registered transfer to bearer, when the principal of the bond will again become transferable by delivery, and remain so until again registered in like manner in the name of the holder. The Trustee shall have access to said books at all reasonable times, and, upon request in writing, shall have a list of the registration shown thereon at any date specified. For the purpose of administering the trust created by this mortgage, the person in whose name the principal of any bond is registered on said books shall be taken to the owner thereof. The coupons annexed to any bond issued hereunder, whether the principal of the bond be registered or not, will always be transferable by delivery.

The Trustee agrees to keep, at its office in the city of New York, a register of all bonds purchased or redeemed or drawn for redemption from the sinking fund herein provided for, and such register shall be at all reasonable times open to the inspection of each holder of bonds secured hereby.

Article Fifth. The parties hereto agree with each other and with the respective persons, firms and corporations who shall at any time become holders of bonds or coupons issued hereunder, that out of said bonds, all, or the proceeds thereof, except so many as shall be used for the acquisition of existing lease warrants, car trust certificates, obligations or securities, as hereinafter provided, shall be reserved by The Trustee to be used in acquiring by purchase, from time to time, by and in the name of The Trustee, to be held in trust as security for the bonds issued hereunder, and to be furnished for the use of The Danville Company under the provisions hereof, such railroad equipment and rolling-stock as, by the written order of the Danville Company, The Trustee shall be required to purchase from such persons, firms and corporations as shall be designated by The Danville Company, and upon such terms and conditions and at such prices as may be prescribed in such order, and that at least one million and ninety-three thousand dollars (\$1,093,000) in amount of said bonds, or their proceeds, shall be so used; and that the railroad equipment and rolling-stock so acquired by The Trustee shall be sold and transferred by the persons, firms or corporations from whom the same are purchased directly to The Trustee, and that the bonds and proceeds used in the acquisition thereof shall be delivered or paid out by The Trustee upon the written order of The Danville Company, upon the delivery to The Trustee of the bills of sale to The Trustee of the railroad equipment and rolling-stock acquired with such bonds or proceeds, all said bills of sale to be first approved by The Danville Company, by proper certificate or voucher, which shall be conclusive evidence of acceptance of such railroad equipment and rolling-stock to the satisfaction of The Danville Company for its use hereunder, and the discharge of The Trustee from the responsibility of approval thereof; and that all of said rolling-stock and equipment shall be held by The Trustee in its name and ownership in trust subject to all the terms and conditions of this deed of trust or mortgage, which shall be the first lien thereon, until all the bonds hereby secured are paid according to the terms thereof and of this indenture.

Article Sixth. The parties hereto agree with each other

and with the respective persons, firms and corporations who shall at any time become holders of bonds or coupons issued hereunder, as follows :

(1) That said bonds, to the amount of one million four hundred and seven thousand dollars (\$1,407,000), or the proceeds thereof, shall be reserved by The Trustee to be used as far as necessary in acquiring by exchange, purchase or otherwise, as hereinafter provided, the outstanding lease warrants, car trust certificates, obligations and securities, based upon and secured by certain railroad equipment and rolling-stock now used by The Danville Company, and described in the car trust leases or contracts hereinbefore recited ; that said bonds may, from time to time, upon the written order of The Danville Company, be exchanged at not less than par for such lease warrants, car trust certificates, obligations or securities, and that the proceeds of any of said bonds which shall have been sold shall be used, from time to time, upon the like order, in acquiring by purchase such lease warrants, car trust certificates, obligations or securities, at any price not exceeding the par thereof and accrued interest, provided such order to purchase be accompanied by the certificate of the President or Vice-president or Treasurer of The Danville Company, or by other certificate or evidence satisfactory to The Trustee, that, after compliance with the order, there will remain in the hands of The Trustee bonds, or bonds and proceeds of bonds, applicable to the purpose (estimating the cash value of the bonds at ninety-five per centum) sufficient for the purchase, as they may mature, of all said lease warrants, car trust certificates, obligations and securities, which shall not have been previously acquired by The Trustee hereunder ; and that The Trustee will always retain of said bonds, or bonds and proceeds of bonds, sufficient, when estimated as aforesaid, to purchase all of said lease warrants, car trust certificates, obligations and securities remaining unacquired ; and that the bonds or proceeds at any time so used shall be delivered or paid out by The Trustee upon the written order of The Danville Company, upon delivery to The Trustee of the lease warrants, car trust certificates, obligations or securities acquired with such bonds or proceeds ; and when all said lease warrants, car trust certificates, obligations and securities shall have been acquired by purchase or exchange, as aforesaid, any residue of said \$1,407,000 bonds or their proceeds shall be used and disposed of by The Danville Company for the purposes hereinbefore provided as to the said \$1,093,000 bonds.

(5) That all the costs, charges and legal or other expenses necessary or incident to the acquiring by The Trustee of any of said lease warrants, Car Trust certificates, obligations or securities or to the conveyance to The Trustee of any railroad equipment or rolling stock on which any thereof may be based, shall be paid out of said one million four hundred and seven thousand dollars (\$1,407,000) in amount of bonds issued hereunder or their proceeds as part of the purchase price of what is so acquired.

(6) That until all the payments provided for in this indenture and in the bonds issued hereunder shall have been fully made by The Danville Company, and all the agreements or its part hereunder shall have been kept and performed, the title to the railroad equipment and rolling stock described in the Car Trust leases and contracts hereinbefore referred to shall not pass to or vest in The Danville Company, nor shall The Danville Company have any right in respect to said railroad equipment and rolling stock, except that of using the same, as provided in said leases and contracts and in this indenture, the terms and requirements whereof are not intended to prejudice or in any way affect the right, title or interest of the owners named in such leases or contracts, or of persons or corporations claiming under them, in respect to the said railroad equipment and rolling stock or their liability under said contracts or the performance by any party thereto of any agreement contained in or arising by virtue of the said Car Trust leases and contracts or the lease warrants, Car Trust certificates, obligations or securities issued thereunder or based thereon.

Article Seventh. The Trustee agrees with the respective persons, firms and corporations who shall at any time become holders of the bonds or coupons issued hereunder, and with The Danville Company, that it will hold all the rolling stock and railroad equipment and all the lease warrants, Car Trust certificates, obligations and securities at any time acquired by it with any of said bonds or with the proceeds of any thereof, in trust, under the provisions of this indenture, for the equal benefit and security of all the persons, firms and corporations who shall at any time become holders of said bonds or coupons, without priority, preference or distinction, as to lien or otherwise, by reason of priority in time of the issue or negotiation of any of said bonds, so that all of said bonds shall have the same lien, right and privilege under and by virtue of this indenture, with like effect as if they had all been executed, delivered and negotiated simultaneously on the date hereof.

Article Eighth. The Trustee agrees with The Danville Company that so long as there is no default by The Danville Company in the payment of principal or interest of any of the bonds secured by this indenture, or in any of the sinking fund payments, or other payments herein provided for, or in respect to any agreement in said bonds or herein contained, and so long as there is no proceeding of any kind against The Danville Company for the appointment of a receiver or for the foreclosure of any deed of trust or mortgage, and so long as The Danville Company shall not be in default in any of the payments required to be made under any of its Car Trust leases, contracts or obligations, The Danville Company shall have, and is hereby given, the possession and use of the railroad equipment and rolling-stock at any time acquired by The Trustee hereunder, with the right to receive the earnings hereof.

Article Ninth. The Danville Company agrees with The Trustee and with the persons, firms and corporations who shall at any time become holders of bonds or coupons issued under this indenture, that it will hold and use said railroad equipment and rolling-stock in accordance with the provisions of this indenture, and will not transfer possession of any thereof to any other persons or corporations, except temporarily, in the usual course of traffic, without the written consent of The Trustee, and that, in case possession of any of the railroad equipment or rolling-stock at any time furnished for its use by The Trustee, as provided herein, shall in the course of traffic be transferred from The Danville Company to any other person or corporation, such other person or corporation, so long as any of said railroad equipment or rolling-stock shall be in their possession, shall hold the same as bailee of The Trustee, and not of The Danville Company, and shall be answerable to The Trustee for the same, and that The Danville Company, in any arrangement it shall make with such other persons or corporations in respect thereto, shall act only as the agent of The Trustee, and not on its own behalf.

Article Tenth. The Danville Company agrees that it will, at its own expense, keep all the railroad equipment and rolling-stock, at any time furnished for its use by The Trustee, as herein provided, in good order and repair, and will at once replace at its own cost any of the same that shall be destroyed from any cause whatever, during the continuance of this trust, with other like railroad equipment or rolling-stock of equal value, or with such other rolling-stock and equipment of different character, but of

equal value, as may approved in writing by The Trustee, and that The Danville Company will promptly file with The Trustee a statement in detail of the former railroad equipment and rolling-stock and of the railroad equipment and rolling-stock so provided in replacement thereof; and that The Danville Company will make all repairs and replacements to the satisfaction of any competent inspector at any time selected by The Trustee to examine the same, and will cause all the rolling-stock and equipment provided in replacement of any previously covered hereby, to be transferred to The Trustee by proper bills of sale and free of lien, and will cause to be marked, on each side of every article of rolling-stock and equipment acquired by The Trustee for the purpose hereof, the words :

“Owned by Central Trust Company of New York, trustee Richmond and Danville Railroad Company Equipment Mortgage,”

and the proper number; and will not allow the name or designation of any other company as owner to be placed on any such railroad equipment or rolling stock; and will immediately restore any such marks of ownership at any time destroyed, and will do such other acts as The Trustee shall require for the full protection of the property and rights of The Trustee hereunder.

The Danville Company further agrees that it will, through its general manager, or other proper officer or agent, furnish to The Trustee, yearly, in the month of November, during the continuance of this trust, or oftener if required by The Trustee, a statement of all the railroad equipment and rolling stock then in use by The Danville Company hereunder, with a special statement of the number and description of all such as shall have been destroyed and substituted during the year next preceding, and that The Trustee shall have the right to inspect the said equipment and rolling stock as often as it shall desire, during the continuance of this trust, by any person appointed by The Trustee, and that The Danville Company will provide the necessary means or the necessary authority to enable such person to travel without charge over the railroads on which any of such railroad equipment or rolling stock may be, for the purpose of making such inspection.

The Danville Company further agrees that it will insure all the railroad equipment and rolling stock at any time furnished for its use by The Trustee, as herein provided (including all replacements thereof), as the property and for the benefit of The Trustee, for such amounts as

other similar railroad equipment and rolling stock are insured by The Danville Company, and will keep the said railroad equipment and rolling stock so insured until the bonds hereby secured are fully paid, and will deposit the policies of insurance or certificates thereof with The Trustee.

Article Eleventh. It is agreed between the parties hereto that if The Danville Company shall fail to pay the principal or any interest of any of the bonds hereby secured, or to make the semi-annual sinking fund payments, or any other payments provided for herein, within ninety days after the same shall be payable, or if The Danville Company shall fail for ninety days to keep or perform any of its agreements contained herein, or in any of the bonds secured hereby, or if proceedings of any kind shall be commenced against The Danville Company for the appointment of a receiver, or for the foreclosure of any deed of trust or mortgage of the Danville Company, or if The Danville Company shall make default in any of the payments required to be made under any of its Car Trust leases, contracts or obligations, then, and in any of such events, The Trustee may, in its discretion, and shall upon written request of the holders of one-fourth in amount of the bonds secured hereby, and then outstanding, and upon adequate security and indemnity against all costs, expenses and liabilities to be by it incurred, forthwith do any or all of the things following, namely :

(1) Demand of the Danville Company and of any other person or corporation then having the same, the immediate possession of any or all of the existing railroad equipment and rolling stock which shall have been furnished for the use of The Danville Company under the provisions hereof, including all replacements thereof, and, with such force as may be necessary, enter upon the railroad and other premises of The Danville Company, and of any other person or corporation on whose premises the same may be, and take immediate and maintain exclusive possession of any or all of said railroad equipment and rolling stock and upon such retaking thereof, hold and use, or operate the same, or lease the same, or otherwise contract for the use thereof, making from time to time all proper repairs thereof, and paying insurance, taxes and other necessary expenses connected therewith and receive the earnings, rentals and profits thereof.

(2) After such retaking, proceed, with or without the order or decree of a court of equity or other competent

court having jurisdiction in the premises, to sell any or all of said railroad equipment and rolling stock at public sale, in such lots or amounts, on such notice and at such times and at such places as The Trustee or court may determine, and adjourn any sale from time to time, and, upon any such sale, to transfer and deliver any property sold to the purchaser thereof by good and sufficient instrument of transfer, but without liability to see to the application of the purchase money, and without obligation to inquire into the necessity, expediency or authority of any such sale, which sale shall be a perpetual bar, both in law and equity, against The Trustee and against The Danville Company and against all persons claiming under either of them.

(3) Cease to take up, purchase or otherwise acquire any of the lease warrants, Car Trust certificates, obligations or securities hereinbefore referred to, then outstanding, and sell at public sale in such amounts, on such notice and at such times and at such places as The Trustee or a court of competent jurisdiction may determine, such of the lease warrants, car trust certificates, obligations or securities already acquired then remaining with The Trustee as constitute all which are outstanding of any series based on a certain amount of railroad equipment or rolling stock, and do whatever the former holders of such lease warrants, car trust certificates, obligations or securities as constitute all which are outstanding of any series based on a certain amount of railroad equipment or rolling stock would have had a right to do in case there had been a default in respect thereto, and, through lien or otherwise, enforce or require the enforcement of the rights of The Trustee in respect to all the lease warrants, car trust certificates, obligations or securities, taken up, purchased or otherwise acquired by it hereunder, the intention being that The Trustee shall have the same title, rights and remedies with respect to all of said lease warrants, car trust certificates, obligations and securities as appertained thereto in the hands of the previous owners, subject, as regards those of any series, to the prior rights of the holders of the rest of the series of which they form a part.

Article Twelfth. It is agreed by The Danville Company that in case of a retaking by The Trustee of any of the railroad equipment or rolling stock at any time furnished or substituted for the use of The Danville Company hereunder, or in case The Trustee shall demand the possession of the same under any of the agreements herein contained, then The Danville Company will, without cost or charge

to The Trustee or to those beneficially interested in the trust hereby created, cause every railroad company having the possession or use of any of said property from The Danville Company, to draw forthwith, in usual manner and at the usual speed of freight-trains, the said railroad equipment and rolling stock to such point or points on the railroad where the same may be, as shall be reasonably designated by The Trustee, and that The Danville Company will draw said railroad equipment and rolling stock from any points of connection with other railroads or points on its own railroads where the same may be to such point or points on any of its own railroads as shall be reasonably designated by The Trustee, and that The Trustee shall have the right, without expense to it, to keep and store the said railroad equipment and rolling stock upon any of the railroads or premises of The Danville Company until sold, as provided herein, and until a reasonable time for removal thereafter, or until removed by The Trustee without sale.

Article Thirteenth. The Danville Company further agrees that in case of any default on its part hereunder, all the earnings of the said railroad equipment and rolling stock at any time furnished for the use of The Danville Company by The Trustee, as herein provided, shall then and thereafter be payable to The Trustee and be applied by it as if received for the use thereof after a retaking under the provisions hereof; and The Danville Company agrees forthwith upon such default to give notice to the Railroad Clearing House Association and any Railroad Companies which at the time shall hold or owe any moneys for the service or use of the said railroad equipment and rolling stock, to pay over all such moneys to The Trustee, and hereby authorizes The Trustee to receive the same and to give such notice with like effect as if given by The Danville Company. It is agreed, however, that such notice shall not be necessary to enable The Trustee to collect and receive such earnings in case of any such default.

Article Fourteenth. It is agreed between the parties hereto that in the event of any default by The Danville Company in respect to any of the bonds hereby secured or in any of its agreements herein contained, The Trustee may in its discretion, and upon the written request of holders of one-fourth in amount of said bonds then outstanding, and upon security and indemnity as aforesaid, shall, in its own name or otherwise, such default continuing, proceed to protect the rights and enforce the remedies of the holders of bonds secured hereby by proceedings in equity or at law, whether for the specific performance by The Danville Com-

pany of any of its agreements contained herein, or in any of the lease warrants, Car Trust certificates, securities or obligations acquired by The Trustee under the provisions hereof, or in aid of the execution of powers herein granted, or for the enforcement of any other lien, right or remedy, as The Trustee, being advised by counsel, shall deem most effectual; it being understood and hereby declared that the provisions for retaking and sale hereinbefore set forth do not in any way deprive The Trustee or the beneficiaries under this trust of any legal or equitable remedy by judicial proceedings, consistent with the provisions of this indenture, nor waive nor affect any lien or right which shall, by virtue hereof or otherwise, at any time be vested in The Trustee or in the holders of bonds secured hereby.

It is hereby further declared and agreed that no holder of any bond secured hereby shall at any time have the right to institute any suit, action or proceeding in equity or at law for the foreclosure of this indenture or the execution of the trusts hereof, or for the appointment of a receiver or for any other remedy, unless one-fourth in amount of the holders of bonds hereby secured then outstanding shall have made a request in writing to The Trustee to proceed to exercise the powers hereinbefore granted, or to institute in its own name such a suit, or proceeding, and shall have offered to The Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred therein by The Trustee, and The Trustee shall have failed to comply with such request within a reasonable time thereafter.

Article Fifteenth. The Danville Company agrees that, in case of any default upon its part as aforesaid, it will not set up, claim or seek to take advantage of any present or future valuation, stay of execution, appraisement or extension laws, which might prevent or delay the exercise of the right of The Trustee to retake possession of any of the railroad equipment or rolling stock covered hereby or to operate, use, lease or otherwise contract with regard to the use of the same, or to sell any of the property covered hereby, or which might prevent or delay the immediate enforcement or foreclosure of this indenture or the absolute sale and delivery of any of said property under any proceedings for such purpose, but hereby irrevocably waives the benefit of all such laws; and also hereby irrevocably waives all right to have any of the property covered hereby marshalled upon any foreclosure sale thereof, and consents that the same be sold either as a whole or in such lots or amounts as may be determined by The Trustee or by any court of competent jurisdiction.

Article Sixteenth. It is agreed between the parties hereto that at any sale of any of the railroad equipment and rolling stock, lease warrants, Car Trust certificates, obligations or securities, covered hereby, whether made by The Trustee or by judicial authority, The Trustee may bid for and purchase any of the property so sold, or cause the same to be bid for and purchased, on behalf of all the holders of the bonds hereby secured and then outstanding, in the ratio of the respective interests of such bondholders, at a reasonable price, if but a portion thereof be sold, or if the whole thereof be sold, then at a price not exceeding the total amount of the principal of such bonds then outstanding, with the interest accrued thereon and the expenses of such sale; and that in the event of the purchase of any of said property by The Trustee, the right and title thereto shall vest in said Trustee, in trust for the purchasers, and each holder of bonds or coupons joining in said purchase, and contributing his proportion of the expenses thereof, shall have an interest in the property so purchased, in the ratio that his bonds and coupons bear to all the bonds and coupons hereby secured then outstanding.

Article Seventeenth. It is further agreed between the parties hereto that in the case of a sale of any of the property covered hereby, whether made by The Trustee or by judicial authority, any purchaser, after making a cash payment sufficient to cover the costs and expenses of the sale and all other charges, which must be provided for in cash, shall have the right, in completing payment, to apply thereon any of the bonds or coupons secured hereby and entitled to share in the net proceeds of such sale, counting such bonds and coupons for that purpose at the sum which shall be payable thereon out of such net proceeds, and if such sum shall be less than the amount then due upon such bonds or coupons, to make settlement by receipting upon all such bonds or coupons the amount to be credited thereon as aforesaid.

Article Eighteenth. It is agreed between the parties hereto that The Trustee after deducting from the net income from such use of said railroad equipment and rolling stock and from the net proceeds of any sale thereof, or of said lease warrants, Car Trust certificates, obligations or securities, all proper costs, charges and disbursements, including attorney and counsel fees, and all expenses, advances or liabilities for repairs, insurance, taxes or assessments, and reasonable compensation for its own services, shall apply the remainder of such net proceeds to or towards the payment or discharge of the principal and interest at

such time unpaid upon the bonds hereby secured, then outstanding, whether or not the principal be then due by the terms of the bonds, and without preference of principal over interest, or of interest over principal, and that The Trustee shall pay to The Danville Company any surplus which may remain after the full satisfaction of the principal and interest of all of said bonds.

Article Nineteenth. It is agreed between the parties hereto that, after any default for ninety days on the part of The Danville Company in any payment required by any bond hereby secured or by any of the provisions hereof, the holders of a majority in amount of the bonds secured hereby, then outstanding, may by instrument in writing, at any time while the default continues, declare the principal sum of all of said bonds to be due, or may waive, or instruct The Trustee to waive, on behalf of all the holders of said bonds, on such terms and conditions as such majority may deem proper, the right so to declare such principal sum due, and may in like manner annul a previous declaration, provided such principal sum shall not have become due upon a retaking or sale of property covered hereby, and may in like manner annul a previous waiver, and such principal sum shall become due or cease to be due according to the declaration or annulment; provided further that no such action of bondholders or of The Trustee shall affect any subsequent default or impair any rights or remedies resulting therefrom

It is further agreed between the parties hereto that, in the event of The Trustee's retaking possession hereunder of any of the railroad equipment or rolling-stock hereinbefore referred to, or in the event of any sale thereof, or of any of the lease warrants, car trust certificates, obligations or securities hereinbefore described, by reason of any default on the part of The Danville Company, whether such sale be by The Trustee or by judicial authority, then, and in either case, the principal sum of all the bonds secured hereby then outstanding, and the full amount of all lease warrants, car trust certificates, obligations and securities then acquired by The Trustee under the provisions hereof, shall forthwith become due and payable, anything in said bonds or in said lease warrants, car trust certificates, obligations or securities or herein contained to the contrary notwithstanding.

Article Twentieth. It is agreed between the parties hereto that the trusts created by this instrument are accepted on the express condition that The Trustee shall not incur any liability or responsibility whatever in conse-

quence of allowing The Danville Company, or any railroad company under it, through lease, contract, or otherwise, to have or retain possession or use of the said railroad equipment and rolling-stock, at any time furnished for the use of The Danville Company by The Trustee, as herein provided; and that The Trustee shall not be liable for any destruction, deterioration, loss or damage to any of the property covered hereby, nor for any act, fault or misconduct of any agent or person employed by it, unless chargeable with palpable negligence in their selection or in their continuance in employment, nor for any error or mistake made by it in good faith, but only for gross negligence or wilful default in the discharge of its duties as Trustee.

Also, that in case The Trustee shall retake possession of any of the property covered hereby, and shall use and or operate the same, as hereinbefore provided, it shall be indemnified, out of the moneys and property which shall come into its hands as aforesaid, for all claims and demands against it arising from such fault or misconduct of its officers, agents or employees, and that in all cases The Trustee shall be authorized to pay such reasonable compensation as it may deem proper to all attorneys, agents and servants whom it may reasonably employ in the management of the trust; and that The Trustee shall have just compensation for all services which it may render in connection with the trust, to be paid by The Danville Company or out of the trust estate.

Article Twenty-first. It is agreed between the parties hereto that The Trustee may resign from the trust hereby created by mailing notice to The Danville Company and advertising the same at least once a week for four successive weeks in two daily journals of general circulation published in the city of New York, the resignation to take effect so soon as a new Trustee is appointed; also that The Trustee may be removed at any time by an instrument in writing, signed by a majority in interest of the holders of the bonds secured hereby and then outstanding.

It is further agreed that in case The Trustee shall resign, or be removed as herein provided or by a court of competent jurisdiction, the holders of a majority in amount of said bonds then outstanding shall have authority by instrument in writing to appoint a new trustee to fill the vacancy; and that until such appointment by bondholders, the Board of Directors of The Danville Company may appoint a trustee to fill such vacancy for the time being, subject to the right of the holders of a majority in amount of said bonds to annul such appointment and appoint a new

trustee. If a vacancy in the office of trustee shall remain unfilled for thirty days, any owner of a bond secured hereby may, on not less than ten days' notice to The Danville Company, apply to the Circuit Court of the United States for the Southern District of New York for the appointment of a new trustee. Every new trustee, however, appointed, must be a Trust Company of the City of New York.

Every new Trustee shall, immediately upon appointment, and by virtue thereof be vested with all the property, estate, rights, powers and discretions of the trustee whom it succeeds.

Article Twenty-second. Any request, declaration, annulment or appointment herein provided to be made by owners of bonds secured by this indenture shall be by instrument or instruments in writing, and must be signed by the bondholder or his attorney duly authorized for the purpose, and proved by the certificate of a notary public or other officer authorized to take acknowledgements of deeds that each person signing the same acknowledged the execution thereof and made oath before him to the ownership of the bonds by the person claiming to own the same. Every power under which an attorney shall sign any such instrument must be proved by a like certificate as to the execution thereof and must be filed with the instrument so signed. With respect to every request, declaration and annulment, The Trustee may require all persons claiming to be bondholders, except registered bondholders, to produce their bonds or give other evidence of ownership satisfactory to The Trustee. Meetings of bondholders for action under the provisions of this indenture may be called by The Trustee, and shall be called upon request of owners of not less than five hundred thousand dollars in amount of said bonds, who may themselves call such meeting, upon failure of The Trustee to comply promptly with such request. Such meetings shall be held at the office of The Trustee in the City of New York, unless otherwise directed by such bondholders.

Article Twenty-third. Each of the parties hereto agrees with each of the others and with all the persons, firms and corporations that shall at any time become holders of bonds or coupons secured by this indenture, that they will at any time, upon reasonable request, execute and deliver such further instruments and do such further acts as may be necessary or proper to carry out more effectually the purposes of this indenture, and to

transfer to any new trustee the property held in trust hereunder.

Article Twenty-fourth. It is understood and agreed between the parties hereto that the words, "The Trustee," as used in this indenture, shall always be construed to mean The Trustee for the time being; also that the words "lease warrants" as used in this indenture shall be construed to mean the lease warrants or other obligations for the payment of money given by The Danville Company under any of its car trust leases or contracts hereinbefore referred to; also that the words "instrument in writing" as used in this indenture, with respect to the execution thereof by bondholders shall be construed to mean any instrument or any number or similiar instruments signed by bondholders or their attorneys in fact authorized to sign the same.

Article Twenty-fifth. The Trustee agrees that if The Danville Company shall pay the interest on all the bonds at any time issued hereunder, and shall make the sinking fund payments required to be made according to the terms and condition hereof and of the bonds secured hereby, and shall pay all other amounts payable under the provisions hereof, and shall keep and perform all the agreements and undertakings on its part herein set forth or arising by virtue hereof, according to the true intent and meaning of this indenture, and if The Danville Company shall pay the principal sum of all of said bonds when the same shall mature or be declared or become due under any provisions hereof, then, and upon the payment of said principal sum, all of the said railroad equipment and rolling stock and lease warrants, car trust certificates, obligations and securities then owned and held by The Trustee shall forthwith become the property of The Danville Company; and The Trustee shall thereupon execute and deliver such instrument or instruments in writing as shall be necessary or proper in the opinion of counsel of The Danville Company to convey said property to The Danville Company, and release the same from all liens created by this deed of trust or mortgage, and to discharge this indenture from record.

Article Twenty-sixth. The Trustee hereby accepts the trusts created by these presents, and covenants and agrees to exercise the powers herein contained, to the best of its ability, at the times, in the manner and upon the contingencies and conditions herein mentioned.

Article Twenty-seventh. It is further agreed by and

between the parties hereto that all the rights and remedies hereinbefore given to, or conferred upon The Trustee in reference to the railroad equipment, rolling stock, lease warrants, car trust obligations and securities at any time held or acquired by The Trustee, as provided in the indenture, shall extend, as far as the same may be appropriate and applicable, to, and be exercised by The Trustee, with reference to all the other property, premises, works, leases, rights, franchises and appurtenances hereinbefore described and set forth.

In witness whereof, each of the parties hereto has caused its corporate seal to be hereto affixed and attested by its secretary, and this instrument to be signed by its president or one of its vice-presidents, on this third day of September, 1889.

{ Corporate
Seal. }

RICHMOND AND DANVILLE
RAILROAD COMPANY,
By GEO. S. SCOTT,
President.

Attest:

A. J. RAUH, Ass't Secretary.

{ Corporate
Seal. }

CENTRAL TRUST COMPANY
OF NEW YORK,
By F. P. OLcott,
President.

Attest:

C. H. P. BABCOCK, Secretary.

THE STATE OF NEW YORK. } ss:
City and County of New York, }

I, Charles Nettleton, a commissioner appointed by the Governor of the State of Virginia for the county and State aforesaid, do hereby certify that this day before me personally appeared Geo. S. Scott, whose name is signed to the foregoing mortgage deed of trust, and who, being duly sworn, did depose and say that he is the President of the Richmond and Danville Railroad Company, the corporation described in and which executed the said mortgage deed of trust; that the seal affixed thereto is the corporate seal of said company, and was thereto affixed by order of its Board of Directors, and that by like order and authority he signed the name of the said corporation and his own as its President thereto, and acknowledged the same to be the act and deed of the said The Richmond and Danville Railroad Company for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 28th day of October, 1889.

Seal.

CHARLES NETTLETON,
A Commissioner for Virginia in New York.

THE STATE OF NEW YORK. }
City and County of New York. } ss :

I, Charles Nettleton, a commissioner appointed by the Governor of the State of Virginia for the county and State aforesaid, do hereby certify that this day before me personally appeared F. P. Olcott, whose name is signed to the foregoing mortgage deed of trust, and who, being duly sworn, did depose and say that he is the president of the Central Trust Company of New York, The Trustee named in the foregoing mortgage deed of trust; that the seal affixed thereto as such is the corporate seal of said company, and was so affixed by order of its Board of Trustees, and that by like order and authority he signed the name of the said corporation and his own as its president, thereto, and acknowledged the same to be the act and deed of the said Central Trust Company of New York for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 28th day of October, 1889.

Seal.

CHARLES NETTLETON,
A Commissioner for Virginia in New York.

EXHIBIT 5.

EQUIPMENT SINKING FUND SIX PER CENT. MORTGAGE
OF THE
RICHMOND AND DANVILLE RAILROAD COMPANY
TO THE
CENTRAL TRUST COMPANY OF NEW YORK, TRUSTEE.

Indenture dated this first day of May, 1891, by and between the Richmond and Danville Railroad Company, a corporation of the State of Virginia, hereinafter called "The Danville Company," party of the first part, and the Central Trust Company of New York, a corporation of the

State of New York, hereinafter called "The Trustee," party of the second part.

Whereas, The Danville Company desires to purchase certain railroad equipment and rolling stock to be used in the operation of its main and leased line of railroads.

And whereas, it has been agreed that this deed of trust or mortgage shall be created to secure the purchase money for railroad equipment and rolling stock to be hereafter acquired by The Trustee for the use of The Danville Company ;

And whereas, at the meeting of the Stockholders of The Danville Company, held at the principal office of said company in the city of Richmond, in the State of Virginia, on the 22d day of June, 1891, it was unanimously resolved,

"That the Board of Directors of this company be and are hereby authorized to issue equipment trust bonds for the sum of two million dollars, bearing such rate of interest and payable at such time as the Board of Directors may determine, and to secure the same by deed of trust, mortgage or other instrument in such form as the Board of Directors may determine, upon the equipment thus purchased or other property of the company, said bonds to bear date of May 1st, 1891 ;

Resolved, That in order to accomplish the objects of these resolutions, full, ample and complete authority is hereby given to said Board of Directors to execute in such manner as may be deemed necessary, each, every and all legal instruments that it may become requisite to make and execute, in order to carry out the objects aforesaid."

And whereas, at a meeting of the Board of Directors of the Danville Company, held on the 24th day of June, 1891, the following preamble and resolutions were unanimously adopted :

"Whereas, in pursuance of the resolutions heretofore adopted by the stockholders of this company, and in order to provide for the use and ultimate ownership by this company of additional railroad equipment and rolling stock necessary for the operation of its railroad and leased lines and to secure the payment of the purchase money of such additional railroad equipment and rolling stock, it is necessary for this company to issue its bonds to the limit of two million dollars (\$2,000,000), to be secured upon all the railroad equipment and rolling stock purchased from the proceeds of said bonds.

“ Therefore, be it resolved, that this company make and issue its bonds to the limit of two million dollars (2,000,000), payable in gold coin of the United States of the present standard of weight and fineness, to be dated on the first day of May, 1891, and to become due on the first day of May, 1906, and bearing interest from the first day of May, 1891, at the rate of six per cent. per annum, payable semi-annually in like gold coin, in the city of New York, on the first days of November and May in each year, until the principal sum is paid, each bond to be for one thousand dollars, all said bonds to be sealed with the corporate seal of the company, attested by its secretary, and to be signed in the corporate name of this company by its president, and each of said bonds to have interest coupons annexed, authenticated by the engraved *fac simile* of the signature of its treasurer, and to be duly certified by the trustee of the deed of trust or mortgage, securing equally all of said bonds and coupons, the bonds, coupons and certificate thereto to be substantially in the forms following:

(FORM OF BOND.)

UNITED STATES OF AMERICA,

\$1,000.

STATE OF VIRGINIA.

\$1,000

No. ———.

RICHMOND AND DANVILLE RAILROAD
COMPANY.

EQUIPMENT SINKING FUND SIX PER CENT. GOLD BOND.

Limit of Issue, \$2,000,000.

Principal payable in gold coin from sinking fund.

Interest payable half yearly on the first days of November and May, in the city of New York.

The Richmond and Danville Railroad Company hereby binds itself to pay to the bearer or registered owner hereof, at its agency in the city of New York, on the first day of May, 1906, unless this bond be sooner redeemed, one thousand dollars in gold coin of the United States, of the present legal standard of weight and fineness, and to pay interest thereon, in like coin, at the rate of six per cent. per annum from the first day of May, 1891, upon presentation and surrender, at the agency of said company

in the city of New York, of the annexed coupons, as they severally become due, on the first days of November and May, in each year, until said principal sum is paid.

This is one of a series of bonds, of like amount, tenor and date, limited to two million dollars, numbered consecutively from one to two thousand, both inclusive, all equally secured in the manner set forth in a deed of trust or mortgage, dated the first day of May, 1891, made between the Richmond and Danville Railroad Company and the Central Trust Company of New York, trustee under which said trustee acquires, owns and holds in trust, on behalf of the owners of said bonds, railroad equipment and rolling-stock purchased for said Richmond and Danville Railroad Company.

Upon default of said Richmond and Danville Railroad Company for ninety days in the payment of any interest on any of said bonds, or upon its default in certain other respects, the principal of all of said bonds may become due as provided in said deed of trust or mortgage.

The principal of this bond may be registered on the books of the Richmond and Danville Railroad Company, at its agency in the city of New York, and the registration thereof noted hereon, after which no transfer thereof, except on said books, shall be valid until after registered transfer to bearer, when the principal hereof will again become transferable by delivery.

The coupons hereto annexed will always be transferable by delivery.

A sinking fund is provided for in said mortgage payable semi-annually, and amounting each year, with the annual interest on the outstanding bonds secured thereby, to ten per cent. of the principal sum of all such bonds previously issued, whether any thereof have been redeemed or not, and this bond is liable to redemption under the provisions applicable to said sinking fund at the par value thereof, with accrued interest, at any time before its maturity on at least two months notice thereof, advertised not less than once a week in a newspaper published in the city of New York. On the expiration of said two months, the interest thereon shall cease.

This bond will not become valid until the certificate endorsed hereon has been signed by the trustee of said deed of trust or mortgage.

In Witness Whereof, the Richmond and Danville Railroad Company has caused its corporate seal to be hereto affixed and attested by its secretary, and this bond

to be signed by its president, and the name of its treasurer to be engraved in fac-simile on the interest coupons hereto attached, the first day of May, in the year one thousand eight hundred and ninety-one.

RICHMOND AND DANVILLE
RAILROAD COMPANY,

by

[L. s.]

President.

Attest :

Secretary.

(FORM OF COUPON.)

\$30.

\$30.

On the first day of _____, The Richmond and Danville Railroad Company will pay to the bearer, at its agency, in the city of New York, thirty dollars in gold coin of the United States of the present legal standard of weight and fineness, being six months interest on its six per cent. equipment mortgage bond No. _____.

Treasurer.

(FORM OF TRUSTEE'S CERTIFICATE.)

This bond is hereby certified to be one of the series of bonds described in the deed of trust or mortgage herein referred to.

CENTRAL TRUST COMPANY OF NEW YORK,

Trustee.

By

Vice-President.

Resolved, that for the purpose of securing the payment of the principal of all of said bonds and the interest which shall accrue thereon, this company shall execute and deliver a deed of trust or mortgage to the Central Trust Company of New York, trustee, bearing date May 1st, 1891, covering all the railroad equipment and rolling stock at any time purchased or acquired by said Trustee, with the bonds, or the proceeds of bonds, issued under said deed of trust or mortgage, each locomotive and car so acquired to be marked "Owned by Central Trust Company of New York, Trustee

Richmond and Danville Railroad Company Equipment Mortgage No. 2"; such deed of trust or mortgage to be for the benefit and security of the holders of all such bonds at any time outstanding without priority, preference or distinction as to lien or otherwise, so that each bond issued thereunder shall have the same right, privilege or lien as if all said bonds had been executed and delivered simultaneously with the execution and delivery of said deed of trust or mortgage.

Resolved, further, that the president is hereby authorized on behalf of this company, and as its act and deed, to affix its corporate seal to the said bonds and to said deed of trust or mortgage, and to sign the same as such president, and to cause such seal when so affixed to be duly attested by the Secretary, and to acknowledge and deliver said deed of trust or mortgage when so executed, and to cause the same to be duly recorded.

Resolved, further, That said bonds shall, after execution and certification, be sold under the direction of this company, and the proceeds thereof applied by the trustee to the purchase of railroad equipment and rolling-stock, as aforesaid."

And whereas, the Richmond and Danville Railroad Company, in pursuance of said resolutions, and of the laws under which it is incorporated, and of such other lawful authority as it has therefor, is about to execute, issue and negotiate two thousand (\$2,000) bonds for one thousand dollars each, in the form hereinbefore set forth, to be secured hereby.

Now, therefore, in consideration of the premises, and of the mutual agreements hereinafter set forth, and of one dollar paid by each party to the other, it is hereby expressly agreed by and between the parties hereto, its successors and assigns, that the railroad equipment and rolling-stock, at any time held or acquired by The Trustee, as provided in this indenture, are and shall be charged with the agreements, and are and shall be held by The Trustee upon the trusts and for the uses and purposes following :

Article First. The Danville Company, in consideration of the undertakings and agreements of The Trustee herein set forth, hereby agrees forthwith to execute and issue in the form hereinbefore recited, and to deliver to The Trustee to be certified and used for the purposes hereinafter described, bonds of The Danville Company, intended to be secured hereby, to an amount not exceeding two million

dollars (\$2,000,000), and that the certificate of The Trustee upon any of said bonds to the effect that the bond is one of the series of bonds described in this deed of trust or mortgage, shall be conclusive evidence that such bond has been issued in accordance herewith and is entitled to the security hereof.

It is agreed between the parties that The Danville Company may negotiate the sale of any or all of the bonds authorized to be issued hereunder, for such prices and upon such terms as it shall deem best, and that The Trustee shall from time to time, upon the written order of the president or the Board of Directors of the Danville Company, certify and deliver any bonds, the sale of which has been so negotiated, upon receiving the moneys certified in such order to be the amount of net proceeds of the sale of said bonds, which moneys shall be held by The Trustee in trust for all the holders of bonds issued hereunder as a special fund for the acquisition of railroad equipment or rolling stock, as hereinafter provided.

Article Second. The Danville Company agrees to pay the principal of all bonds duly issued hereunder, according to the terms thereof, when the principal shall become or be declared due, upon surrender of the bonds so paid, and shall pay the interest thereon, according to the terms of the said bonds, until the principal is paid, without deductions from principal or interest for any taxes, assessments or governmental or other charges imposed on this deed of trust or mortgage, or on any bonds issued hereunder, or on the payments or obligations required by any of said bonds or by any provisions hereof, or on the property at any time covered hereby, The Danville Company agreeing to pay the same. As the coupons annexed to said bonds are paid, they shall be cancelled, and no purchase of any coupons, nor any advance or loan thereon, nor redemption thereof, by or on behalf of The Danville Company, after the same have been detached from the bonds to which they belong, shall keep such coupons alive or preserve their lien upon any of said property.

Article Third. The Danville Company agrees that, until the payment of all the bonds secured hereby, it will, on or before the first days of November and May, in each year, beginning with the first day of November, 1891, pay to The Trustee a sum of money which, with the semi-annual interest on all said bonds then outstanding, shall equal five (5) per cent. of the principal sum of all such

bonds previously issued, whether any thereof shall have been redeemed or not, so that the payments so made shall amount each year to such sum as, with the annual interest on all said bonds then outstanding, shall equal ten per cent. of the principal sum of all such bonds previously issued, all money so paid in excess of said annual interest to be a special sinking fund to be applied by The Trustee in a manner to be approved by the The Danville Company, to the purchase of bonds secured hereby at the lowest price for which they can be obtained, not exceeding the par value thereof and accrued interest, or if enough of said bonds to exhaust the amount of any semi-annual payment into the sinking fund are not obtainable by The Trustee at or below the par value thereof, and accrued interest, within three months after such payment, then to be used by The Trustee in the redemption on the next interest day of bonds secured hereby and then outstanding at the par value thereof with accrued interest.

Whenever any of such bonds are to be redeemed, the president or other officer of The Trustee shall, on the first Wednesday of August, and on the first Wednesday of February, next preceding the day for redemption, draw by lot, at the office of The Trustee, in the city of New York, from the numbers of all such bonds then outstanding, the denoting numbers of so many bonds as are next to be redeemed. The drawing shall be made by The Trustee, who shall forthwith make and deliver a certificate of the denoting numbers so drawn to The Danville Company. Beginning on or before the first day of the month next after the drawing The Trustee shall advertise, at least once a week for two successive months in one daily journal of general circulation published in the city of New York, the denoting numbers so drawn, with notice that the bonds so numbered will be redeemed by the payment of the par value thereof with accrued interest, at the office of The Trustee, in the city of New York, on the day when interest on said bonds shall next become due, and that interest on such bonds will thereupon cease. If any of such bonds shall not be presented for redemption at the time so advertised, interest thereon shall thereupon cease. All bonds purchased or redeemed under the foregoing provisions shall forthwith be cancelled by The Trustee.

Article Fourth. The Danville Company agrees to keep an agency in the city of New York, while any bonds secured hereby are outstanding, for the payment of the principal and interest thereof, and shall keep at said

agency in the city of New York books on which the transfer of the principal of any of said bonds shall, upon request, be registered without expense to the holder. Each registration of the principal of a bond shall be noted on the bond, after which no transfer thereof can be made, except on said books, until after registered transfer to bearer, when the principal of the bond will again become transferable by delivery, and remain so until again registered in like manner in the name of the holder. The Trustee shall have access to said books at all reasonable times, and, upon request in writing, shall have a list of the registration shown thereon at any date specified. For the purpose of administering the trust created by this mortgage, the person in whose name the principal of any bond is registered on said books shall be taken to be the owner thereof. The coupons annexed to any bond issued hereunder, whether the principal of the bond be registered or not, will always be transferable by delivery.

The Trustee agrees to keep, at its office in the city of New York, a register of all bonds purchased or redeemed or drawn for redemption from the sinking fund herein provided for, and such register shall be at all reasonable times open to the inspection of each holder of bonds secured hereby.

Article Fifth. The parties hereto agree with each other and with the respective persons, firms and corporations who shall at any time become holders of bonds or coupons issued hereunder, that out of said bonds, or the proceeds thereof, shall be reserved by The Trustee to be used in acquiring by purchase, from time to time, by and in the name of The Trustee, to be held in trust as security for the bonds issued hereunder, and to be furnished for the use of The Danville Company under the provisions hereof, such railroad equipment and rolling-stock as, by the written order of the Danville Company, The Trustee shall be required to purchase from such persons, firms and corporations as shall be designated by The Danville Company, and upon such terms and conditions and at such prices as may be prescribed in such order, and that the railroad equipment and rolling-stock so acquired by The Trustee shall be sold and transferred by the persons, firms or corporations from whom the same are purchased directly to The Trustee, and that the bonds and proceeds used in the acquisition thereof shall be delivered or paid out by The Trustee upon the written order of The Danville Company, upon the delivery to The Trustee of the bills of sale to The Trustee of the

railroad equipment and rolling-stock acquired with such bonds or proceeds, all said bills of sale to be first approved by The Danville Company, by proper certificate or voucher, which shall be conclusive evidence of acceptance of such railroad equipment and rolling-stock to the satisfaction of The Danville Company for its use hereunder, and the discharge of The Trustee from the responsibility of approval thereof; and that all of said rolling-stock and equipment shall be held by The Trustee in its name and ownership in trust, subject to all the terms and conditions of this deed of trust or mortgage, which shall be the first lien thereon, until all the bonds hereby secured are paid according to the terms thereof and of this indenture.

Article Sixth. The Trustee agrees with the respective persons, firms and corporations who shall at any time become holders of the bonds or coupons issued hereunder, and with The Danville Company, that it will hold all the rolling stock and railroad equipment at any time acquired by it with any of said bonds or with the proceeds of any thereof, in trust, under the provisions of this indenture, for the equal benefit and security of all the persons, firms and corporations who shall at any time become holders of said bonds or coupons, without priority, preference or distinction, as to lien or otherwise, by reason of priority in time of the issue or negotiation of any of said bonds, so that all of said bonds shall have the same lien, right and privilege under and by virtue of this indenture, with like effect as if they had all been executed, delivered and negotiated simultaneously on the date hereof.

Article Seventh. The Trustee agrees with The Danville Company that so long as there is no default by The Danville Company in the payment of principal or interest of any of the bonds secured by this indenture, or in any of the sinking fund payments, or other payments herein provided for, or in respect to any agreement in said bonds or herein contained, and so long as there is no proceeding of any kind against The Danville Company for the appointment of a receiver or for the foreclosure of any deed of trust or mortgage. The Danville Company shall have, and is hereby given, the possession and use of the railroad equipment and rolling-stock at any time acquired by The Trustee hereunder, with the right to receive the earnings thereof.

Article Eighth. The Danville Company agrees with

The Trustee and with the persons, firms and corporation who shall at any time become holders of bonds or coupons issued under this indenture, that it will hold and use said railroad equipment and rolling-stock in accordance with the provisions of this indenture, and will not transfer possession of any thereof to any other persons or corporations except temporarily, in the usual course of traffic, without the written consent of The Trustee, and that, in case possession of any of the railroad equipment or rolling-stock at any time furnished for its use by The Trustee, as provided herein, shall in the course of traffic be transferred from The Danville Company to any other person or corporation, such other person or corporation, so long as any of said railroad equipment or rolling-stock shall be in their possession, shall hold the same as bailee of The Trustee, and not of The Danville Company, and shall be answerable to The Trustee for the same, and that The Danville Company, in any arrangement it shall make with such other persons or corporations in respect thereto, shall act only as the agent of The Trustee, and not on its own behalf.

Article Ninth. The Danville Company agrees that it will, at its own expense, keep all the railroad equipment and rolling-stock, at any time furnished for its use by The Trustee, as herein provided, in good order and repair, and will at once replace at its own cost any of the same that shall be destroyed from any cause whatever, during the continuance of this trust, with other like railroad equipment or rolling-stock of equal value, or with such other rolling-stock and equipment of different character, but of equal value, as may be approved in writing by The Trustee, and that The Danville Company will promptly file with The Trustee a statement in detail of the former railroad equipment and rolling-stock and of the railroad equipment and rolling-stock so provided in replacement thereof; and that The Danville Company will make all repairs and replacements to the satisfaction of any competent inspector at any time selected by The Trustee to examine the same, and will cause all the rolling-stock and equipment provided in replacement of any previously covered hereby, to be transferred to The Trustee by proper bills of sale and free of lien, and will cause to be marked, on each side of every article of rolling-stock and equipment acquired by The Trustee for the purpose hereof, the words:

“Owned by Central Trust Company of New York

trustee Richmond and Danville Railroad Company Equipment Mortgage, No. 2."

and the proper number; and will not allow the name or designation of any other company as owner to be placed on any such railroad equipment or rolling stock; and will immediately restore any such marks of ownership at any time destroyed, and will do such other acts as The Trustee shall require for the full protection of the property and rights of The Trustee hereunder.

The Danville Company further agrees that it will, through its general manager, or other proper officer or agent, furnish to The Trustee, yearly, in the month of November, during the continuance of this trust, or oftener if required by The Trustee, a statement of all the railroad equipment and rolling stock then in use by The Danville Company hereunder, with a special statement of the number and description of all such as shall have been destroyed and substituted during the year next preceding, and that The Trustee shall have the right to inspect the said equipment and rolling stock as often as it shall desire, during the continuance of this trust, by any person appointed by The Trustee, and that The Danville Company will provide the necessary means or the necessary authority to enable such persons to travel without charge over the railroads on which any of such railroad equipment or rolling stock may be, for the purpose of making such inspection.

The Danville Company further agrees that it will insure all the railroad equipment and rolling stock at any time furnished for its use by The Trustee, as herein provided (including all replacements thereof), as the property and for the benefit of The Trustee, for such amounts as other similar railroad equipment and rolling stock are insured by The Danville Company, and will keep the said railroad equipment and rolling stock so insured until the bonds hereby secured are fully paid, and will deposit the policies of insurance or certificates thereof with The Trustee.

Article Tenth. It is agreed between the parties hereto that if The Danville Company shall fail to pay the principal or any interest of any of the bonds hereby secured, or to make the semi-annual sinking fund payments, or any other payments provided for herein, within ninety days after the same shall be payable, or if The Danville Company shall fail for ninety days to keep or perform any of its agreements contained herein, or in any of the bonds secured hereby, or if proceedings of any kind shall be com-

menced against The Danville Company for the appointment of a receiver, or for the foreclosure of any deed of trust or mortgage of the Danville Company, then, and in any of such events, The Trustee may, in its discretion, and shall upon written request of the holders of one-fourth in amount of the bonds secured hereby, and then outstanding, and upon adequate security and indemnity against all costs, expenses and liabilities to be by it incurred, forthwith do any or all of the things following, namely :

(1) Demand of the Danville Company and of any other person or corporation then having the same, the immediate possession of any or all of the existing railroad equipment and rolling stock which shall have been furnished for the use of The Danville Company under the provisions hereof, including all replacements thereof, and, with such force as may be necessary, enter upon the railroad and other premises of The Danville Company, and of any other person or corporation on whose premises the same may be, and take immediate and maintain exclusive possession of any or all of said railroad equipment and rolling stock and upon such retaking thereof, hold and use, or operate the same, or lease the same, or otherwise contract for the use thereof, making from time to time all proper repairs thereof, and paying insurance, taxes and other necessary expenses connected therewith and receive the earnings, rentals and profits thereof.

(2) After such retaking, proceed, with or without the order or decree of a court of equity or other competent court having jurisdiction in the premises, to sell and distribute the proceeds arising from said sale, as hereinafter provided, any or all of said railroad equipment and rolling stock at public sale, in such lots or amounts, on such notice and at such times and at such places as The Trustee or court may determine, and adjourn any sale from time to time, and, upon any such sale, to transfer and deliver any property sold to the purchaser thereof by good and sufficient instrument of transfer, but without liability to see to the application of the purchase money, and without obligation to inquire into the necessity, expediency or authority of any such sale, which sale shall be a perpetual bar, both in law and equity, against The Trustee and against The Danville Company and against all persons claiming under either of them.

Article Eleventh. It is agreed by The Danville Company that in case of a retaking by The Trustee of any of the railroad equipment or rolling stock at any time furnished or substituted for the use of The Danville Company hereunder, or in case The Trustee shall demand the possession of the same under any of the agreements herein contained, then The Danville Company will, without cost or charge to The Trustee or to those beneficially interested in the trust hereby created, cause every railroad company having the possession or use of any of said property from The Danville Company, to draw forthwith, in usual manner and at the usual speed of freight-trains, the said railroad equipment and rolling stock to such point or points on the railroad where the same may be, as shall be reasonably designated by The Trustee, and that The Danville Company will draw said railroad equipment and rolling stock from any points of connection with other railroads or points on its own railroads where the same may be to such point or points on any of its own railroads as shall be reasonably designated by The Trustee, and that The Trustee shall have the right, without expense to it, to keep and store the said railroad equipment and rolling stock upon any of the railroads or premises of The Danville Company until sold, as provided herein, and until a reasonable time for removal thereafter, or until removed by The Trustee without sale.

Article Twelfth. The Danville Company further agrees that in case of any default on its part hereunder, all the earnings of the said railroad equipment and rolling stock at any time furnished for the use of The Danville Company by The Trustee, as herein provided, shall then and thereafter be payable to The Trustee and be applied by it as if received for the use thereof after a retaking under the provisions hereof; and The Danville Company agrees forthwith upon such default to give notice to the Railroad Clearing House Association and any Railroad Companies which at the time shall hold or owe any moneys for the service or use of the said railroad equipment and rolling stock, to pay over all such moneys to The Trustee, and hereby authorizes The Trustee to receive the same and to give such notice with like effect as if given by The Danville Company. It is agreed, however, that such notice shall not be necessary to enable The Trustee to collect and receive such earnings in case of any such default.

Article Thirteenth. It is agreed between the parties hereto that in the event of any default by The Danville Company in respect to any of the bonds hereby secured or

in any of its agreements herein contained, The Trustee may in its discretion, and upon the written request of holders of one-fourth in amount of said bonds then outstanding, and upon security and indemnity as aforesaid, shall, in its own name or otherwise, such default continuing, proceed to protect the rights and enforce the remedies of the holders of bonds secured hereby by proceedings in equity or at law, in aid of the execution of powers herein granted, or for the enforcement of any other lien, right or remedy, as The Trustee, being advised by counsel, shall deem most effectual; it being understood and hereby declared that the provisions for retaking and sale hereinbefore set forth do not in any way deprive The Trustee, or the beneficiaries under this trust, of any legal or equitable remedy by judicial proceedings, consistent with the provisions of this indenture, nor waive nor affect any lien or right which shall, by virtue hereof or otherwise, at any time be vested in The Trustee or in the holders of bonds secured hereby.

It is hereby further declared and agreed that no holder of any bond secured hereby shall at any time have the right to institute any suit, action or proceeding in equity or at law for the foreclosure of this indenture or the execution of the trusts hereof, or for the appointment of a receiver or for any other remedy, unless one-fourth in amount of the holders of bonds hereby secured then outstanding shall have made a request in writing to The Trustee to proceed to exercise the powers hereinbefore granted, or to institute in its own name such a suit, or proceeding, and shall have offered to The Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred therein by The Trustee, and The Trustee shall have failed to comply with such request within a reasonable time thereafter.

Article Fourteenth. The Danville Company agrees that, in case of any default upon its part as aforesaid, it will not set up, claim or seek to take advantage of any present or future valuation, stay of execution, appraisement or extension laws, which might prevent or delay the exercise of the right of The Trustee to retake possession of any of the railroad equipment or rolling stock covered hereby or to operate, use, lease or otherwise contract with regard to the use of the same, or to sell any of the property covered hereby, or which might prevent or delay the immediate enforcement or foreclosure of this indenture or the absolute sale and delivery of any of said property under any proceedings for such purpose, but hereby irrevocably waives the benefit of all such laws; and also hereby irrevocably

waives all right to have any of the property covered hereby marshalled upon any foreclosure sale thereof, and consents that the same be sold either as a whole or in such lots or amounts as may be determined by The Trustee or by any court of competent jurisdiction.

Article Fifteenth. It is agreed between the parties hereto that at any sale of any of the railroad equipment and rolling stock covered hereby, whether made by The Trustee or by judicial authority, The Trustee may bid for and purchase any of the property so sold, or cause the same to be bid for and purchased, on behalf of all the holders of the bonds hereby secured and then outstanding, in the ratio of the respective interests of such bondholders, at a reasonable price, if but a portion thereof be sold, or if the whole thereof be sold, then at a price not exceeding the total amount of the principal of such bonds then outstanding, with the interest accrued thereon and the expenses of such sale; and that in the event of the purchase of any of said property by The Trustee, the right and title thereto shall vest in said Trustee, in trust for the purchasers, and each holder of bonds or coupons joining in said purchase, and contributing his proportion of the expenses thereof, shall have an interest in the property so purchased, in the ratio that his bonds and coupons bear to all the bonds and coupons hereby secured then outstanding.

Article Sixteenth. It is further agreed between the parties hereto that in the case of a sale of any of the property covered hereby, whether made by The Trustee or by judicial authority, any purchaser, after making a cash payment sufficient to cover the costs and expenses of the sale and all other charges, which must be provided for in cash, shall have the right, in completing payment, to apply thereon any of the bonds or coupons secured hereby and entitled to share in the net proceeds of such sale, counting such bonds and coupons for that purpose at the sum which shall be payable thereon out of such net proceeds, and if such sum shall be less than the amount then due upon such bonds or coupons, to make settlement by receipting upon all such bonds or coupons the amount to be credited thereon as aforesaid.

Article Seventeenth. It is agreed between the parties hereto that The Trustee, after deducting from the net income from such use of said railroad equipment and rolling stock and from the net proceeds of any sale thereof, all proper costs, charges and disbursements, in-

cluding attorney and counsel fees, and all expenses, advances or liabilities for repairs, insurance, taxes or assessments, and reasonable compensation for its own services, shall apply the remainder of such net proceeds to or towards the payment or discharge of the principal and interest at such time unpaid upon the bonds hereby secured, then outstanding, whether or not the principal be then due by the terms of the bonds, and without preference of principal over interest, or of interest over principal, and that The Trustee shall pay to The Danville Company any surplus which may remain after the full satisfaction of the principal and interest of all of said bonds.

Article Eighteenth. It is agreed between the parties hereto that, after any default for ninety days on the part of The Danville Company in any payment required by any bond hereby secured or by any of the provisions hereof, the holders of a majority in amount of the bonds secured hereby, then outstanding, may by instrument in writing, at any time while the default continues, declare the principal sum of all of said bonds to be due, or may waive, or instruct The Trustee to waive, on behalf of all the holders of said bonds, on such terms and conditions as such majority may deem proper, the right so to declare such principal sum due, and may in like manner annul a previous declaration, provided such principal sum shall not have become due upon a retaking or sale of property covered hereby, and may in like manner annul a previous waiver, and such principal sum shall become due or cease to be due according to the declaration or annulment; provided further that no such action of bondholders or of The Trustee shall affect any subsequent default or impair any rights or remedies resulting therefrom

It is further agreed between the parties hereto that, in the event of The Trustee's retaking possession hereunder of any of the railroad equipment or rolling-stock hereinbefore referred to, or in the event of any sale thereof, by reason of any default on the part of The Danville Company, whether such sale be by The Trustee or by judicial authority, then, and in either case, the principal sum of all the bonds secured hereby then outstanding, shall forthwith become due and payable, anything in said bonds or herein contained to the contrary notwithstanding.

Article Nineteenth. It is agreed between the parties hereto that the trusts created by this instrument are accepted on the express condition that The Trustee shall not

incur any liability or responsibility whatever in consequence of allowing The Danville Company, or any railroad company under it, through lease, contract, or otherwise, to have or retain possession or use of the said railroad equipment and rolling-stock, at any time furnished for the use of The Danville Company by The Trustee, as herein provided; and that The Trustee shall not be liable for any destruction, deterioration, loss or damage to any of the property covered hereby, nor for any act, fault or misconduct of any agent or person employed by it, unless chargeable with palpable negligence in their selection or in their continuance in employment, nor for any error or mistake made by it in good faith, but only for gross negligence or wilful default in the discharge of its duties as Trustee.

Also, that in case The Trustee shall retake possession of any of the property covered hereby, and shall use and or operate the same, as hereinbefore provided, it shall be indemnified, out of the moneys and property which shall come into its hands as aforesaid, for all claims and demands against it arising from such fault or misconduct of its officers, agents or employees, and that in all cases The Trustee shall be authorized to pay such reasonable compensation as it may deem proper to all attorneys, agents and servants whom it may reasonably employ in the management of the trust; and that The Trustee shall have just compensation for all services which it may render in connection with the trust, to be paid by The Danville Company or out of the trust estate.

Article Twentieth. It is agreed between the parties hereto that The Trustee may resign from the trust hereby created by mailing notice to The Danville Company and advertising the same at least once a week for four successive weeks in two daily journals of general circulation published in the city of New York, the resignation to take effect so soon as a new Trustee is appointed; also that The Trustee may be removed at any time by an instrument in writing, signed by a majority in interest of the holders of the bonds secured hereby and then outstanding.

It is further agreed that in case The Trustee shall resign, or be removed as herein provided or by a court of competent jurisdiction, the holders of a majority in amount of said bonds then outstanding shall have authority by instrument in writing to appoint a new trustee to fill the vacancy; and that until such appointment by bondholders, the Board of Directors of The Danville Company may appoint a trustee to fill such vacancy for the time being, sub-

ject to the right of the holders of a majority in amount of said bonds to annul such appointment and appoint a new trustee. If a vacancy in the office of trustee shall remain unfilled for thirty days, any owner of a bond secured hereby may, on not less than ten days' notice to The Danville Company, apply to the Circuit Court of the United States for the Southern District of New York for the appointment of a new trustee. Every new trustee, however, appointed, must be a Trust Company incorporated under the laws of the State of New York and doing business in the City of New York.

Every new Trustee shall, immediately upon appointment, and by virtue thereof be vested with all the property, estate, rights, powers and discretions of the trustee whom it succeeds.

Article Twenty-first. Any request, declaration, annulment or appointment herein provided to be made by owners of bonds secured by this indenture shall be by instrument or instruments in writing, and must be signed by the bondholder or his attorney duly authorized for the purpose, and proved by the certificate of a notary public or other officer authorized to take acknowledgements of deeds that each person signing the same acknowledged the execution thereof and made oath before him to the ownership of the bonds by the person claiming to own the same. Every power under which an attorney shall sign any such instrument must be proved by a like certificate as to the execution thereof and must be filed with the instrument so signed. With respect to every request, declaration and annulment, The Trustee may require all persons claiming to be bondholders, except registered bondholders, to produce their bonds or give other evidence of ownership satisfactory to The Trustee. Meetings of bondholders for action under the provisions of this indenture may be called by The Trustee, and shall be called upon request of owners of not less than five hundred thousand dollars in amount of said bonds, who may themselves call such meeting, upon failure of The Trustee to comply promptly with such request. Such meetings shall be held at the office of The Trustee in the City of New York, unless otherwise directed by such bondholders.

Article Twenty-second. Each of the parties hereto agrees with each of the others and with all the persons, firms and corporations that shall at any time become holders of bonds or coupons secured by this indenture,

that they will at any time, upon reasonable request, execute and deliver such further instruments and do such further acts as may be necessary or proper to carry out more effectually the purposes of this indenture, and to transfer to any new trustee the property held in trust hereunder.

Article Twenty-third. It is understood and agreed between the parties hereto that the words, "The Trustee," as used in this indenture, shall always be construed to mean The Trustee for the time being; also that the words "instrument in writing" as used in this indenture, with respect to the execution thereof by bondholders shall be construed to mean any instrument or any number or similar instruments signed by bondholders or their attorneys in fact authorized to sign the same.

Article Twenty-fourth. The Trustee agrees that if The Danville Company shall pay the interest on all the bonds at any time issued hereunder, and shall make the sinking fund payments required to be made according to the terms and condition hereof and of the bonds secured hereby, and shall pay all other amounts payable under the provisions hereof, and shall keep and perform all the agreements and undertakings on its part herein set forth or arising by virtue hereof, according to the true intent and meaning of this indenture, and if The Danville Company shall pay the principal sum of all of said bonds when the same shall mature or be declared or become due under any provisions hereof, then, and upon the payments aforesaid, all of the said railroad equipment and rolling stock then owned and held by The Trustee shall forthwith become the property of The Danville Company; and The Trustee shall thereupon execute and deliver such instrument or instruments in writing as shall be necessary or proper, in the opinion of counsel of The Danville Company, to convey said property to The Danville Company, and release the same from all liens created by this deed of trust or mortgage, and to discharge this indenture from record.

Article Twenty-fifth. The Trustee hereby accepts the trusts created by these presents, and covenants and agrees to exercise the powers herein contained, to the best of its ability, at the times, in the manner and upon the contingencies and conditions herein mentioned.

In witness whereof, each of the parties hereto has

caused its corporate seal to be hereto affixed and attested by its secretary, and this instrument to be signed by its president or one of its vice-presidents, on this first day of May, 1891.

{ Corporate
Seal. }

RICHMOND AND DANVILLE
RAILROAD COMPANY,
By JOHN H. INMAN,
President.

Attest :

A. J. RAUH, Ass't Secretary.

{ Corporate
Seal. }

CENTRAL TRUST COMPANY
OF NEW YORK,
By G. SHERMAN,
Vice-President.

Attest :

C. H. P. BABCOCK, Secretary.

THE STATE OF NEW YORK. }
City and County of New York, } ss :

I, Charles Nettleton, a commissioner appointed by the Governor of the State of Virginia for the county and State aforesaid, do hereby certify that this day before me personally appeared John H. Inman, whose name is signed to the foregoing mortgage deed of trust, and who, being duly sworn, did depose and say that he is the President of the Richmond and Danville Railroad Company, the corporation described in and which executed the said mortgage deed of trust; that the seal affixed thereto is the corporate seal of said company, and was thereto affixed by order of its Board of Directors, and that by like order and authority he signed the name of the said corporation and his own as its President thereto, and acknowledged the same to be the act and deed of the said Richmond and Danville Railroad Company for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 2d day of July, 1891.

{ Seal. }

CHARLES NETTLETON,
A Commissioner for Virginia in New York.

THE STATE OF NEW YORK. }
 City and County of New York, } ss :

I, Charles Nettleton, a commissioner appointed by the Governor of the State of Virginia for the county and State aforesaid, do hereby certify that this day before me personally appeared George Sherman, whose name is signed to the foregoing mortgage deed of trust, and who, being duly sworn, did depose and say that he is Vice-President of the Central Trust Company of New York, The Trustee named in the foregoing mortgage deed of trust; that the seal affixed thereto as such is the corporate seal of said company, and was so affixed by order of its Board of Trustees, and that by like order and authority he signed the name of the said corporation and his own as its Vice-President, thereto, and acknowledged the same to be the act and deed of the said Central Trust Company of New York for the purposes herein mentioned.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 2d day of July, 1891.

CHARLES NETTLETON,
 { Seal. } A Commissioner for Virginia in New York.

And on the same day, to-wit: On the 28th day of June, 1892, came Wm. P. Clyde and others, petitioners and complainants herein, and filed their notice of motion, which is as follows, to-wit:

NOTICE OF MOTION FOR ORDER AUTHORIZING RECEIVERS' CERTIFICATES.

CIRCUIT COURT OF THE UNITED STATES, EASTERN
 DISTRICT OF VIRGINIA.

William P. Clyde and others }
 vs. }
 Richmond & Danville Railroad Co. } In Equity.
 and others. }

Please take notice that, at 2 o'clock P. M., on Tuesday, June 28th, 1892, or as soon thereafter as counsel can be heard, we will, upon our verified petition, a copy of which is herewith served upon you, apply to Hon. Hugh

L Bond, Circuit Judge at Chambers in the city of Baltimore, Md., for the allowance of an order in the above entitled cause, authorizing the issue of receivers' certificates, and directing the payment of coupon interest and rental obligations.

WILLIAM P. CLYDE & OTHERS,
Petitioners and Complainants.

June 27th, 1892.

HENRY CRAWFORD,
FRANK P. CLARK,
Solicitors.

(The foregoing notice is endorsed as follows, viz. :)

Timely service of the within notice and copy of petition is hereby admitted.

June 27, 1892.

BUTLER, STILLMAN & HUBBARD,
Solicitors for Central Trust Co. of N. Y.

W. G. OAKMAN,
Receiver of the Richmond & West Point
Terminal Railway & Warehouse
Company.

JOHN A. RUTHERFURD,
3rd V.-President Richmond & Danville
R. R. Co.

And on another day, to-wit: 28th day of June, 1892, the following order was entered:

ORDER AUTHORIZING ISSUE OF RECEIVERS' CERTIFICATES.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

William P. Clyde and others	}
<i>vs.</i>	
Richmond & Danville Railroad Company and others.	

Now, on this 28th day of June, 1892, the matter of the petition of the complainants, relating to the issue of re-

ceiver's certificates and the payment of interest upon bonds coming in to be heard, the court having heard Mr. Henry Crawford and Mr. Frank P. Clark for the complainants and petitioners, Mr. A. H. Joline for the Central Trust Company of New York, Mr. Hugh L. Bond, Jr., for the receivers, and it appearing that due notice of this application has been served upon the Richmond and Danville Railroad Company and the Richmond and West Point Terminal Railway and Warehouse Company, and it appearing that the allegations of said petition are true, and that the relief prayed will be for the preservation and best interest of the property, and no cause being shown against the same, it is therefore ordered and decreed by the court as follows :

1. That the receivers heretofore appointed in this cause be and they are hereby fully ruthorized and instructed, on the terms and conditions hereinafter stated, to effect a loan of not exceeding one million dollars, to be dated July 1st, 1892, and payable in one or two years, and bear interest not exceeding six per cent. per annum, payable semi-annually at such place in the city of New York, or elsewhere, as shall be expressed in the certificate to be issued by such receivers to the persons making such advances, or any part thereof.

The indebtedness created and evidenced by the receivers' certificate issued under this order is hereby constituted and decreed to be, and so continue until fully paid and satisfied, a first and paramount lien and charge over all mortgages or other liens upon all and singular the Richmond and Danville Railroad and all its appurtenances, equipment, tools, machinery, supplies and franchises, and also all its leasehold estates, operating contracts and rights in, to, and upon all the other railroads which are held, operated or controlled by it, being the entire railroad property now held and managed by the receivers in this cause as the Richmond and Danville system, and upon all the future income and earnings of the said entire system, and such indebtedness, and the receivers' certificate evidencing the same, shall be entitled, out of such earnings, or the proceeds of any sale under foreclosure decree, to priority of payment next after the payment of the operating expenses and other costs of the receivership, and before any claim or demand against said Richmond and Danville Railroad company.

To persons and corporations advancing any part of the loan hereby authorized, the said receivers shall sign, execute and deliver a certificate expressing the amount so

advanced by the payee thereof, which certificate shall bear a serial number, and be substantially in the form following:

THE RICHMOND & DANVILLE RAILROAD RECEIVERS'
CERTIFICATE OF INDEBTEDNESS.

No.

§

This is to certify that the undersigned, not personally, but as receivers of the Richmond and Danville Railroad company, are indebted unto _____, or the bearer hereof, in the sum of _____ dollars, and interest thereon, from date until paid, at the rate of _____ per cent. per annum, payable on the first days of January and July in each year at _____. The principal of this certificate is payable July 1st.

This certificate is one of a series of a like tenor and effect issued by the undersigned as receivers under the order of the Circuit Court of the United States for the Eastern District of Virginia, entered June _____, 1892, in the cause therein pending, wherein William P. Clyde and others are complainants and the Richmond and Danville Railroad Company is the defendant, whereby the receivers were directed to make a loan of not exceeding one million dollars upon the credit of the property and income.

The receivers are in no way personally liable upon this certificate, but under the decree of said Court the principal and interest hereof constitutes, until paid, a first and paramount lien on all the railroad, equipment, appurtenances, and franchises of the Richmond and Danville Railroad Company, and all its leasehold and contract rights in all other railroads held or operated by it, and now in the charge of the receivers, and all of their earnings and income next after the operating expenses and costs of the Receivership.

In witness whereof, the Receivers have signed this certificate this _____ day of _____ 1892,

2. The Receivers shall preserve a proper record showing the serial number, payee and amount of each certificate and shall file a certificate thereof with the Court.

None of such certificates shall be disposed of at less than par. The funds realized from such issue of certificates shall constitute a special fund, which shall be held and used by the Receivers exclusively to pay and discharge all such voucher and supply debts as were created by the Richmond and Danville Railroad Company in and about the operation of its road and leased and operated lines, now in charge of the Receivers, during the six months immediate.

ly preceeding June 15, 1892, and which shall first be examined and approved as valid claims accrued for operating the roads, by Mr. M. F. Pleasants, of Richmond, Virginia, and Mr. A. S. Dunham, of Boston, Mass., who are now appointed as special Masters and Auditors for such purpose and directed with all convenient speed to investigate all such vouchers and claims, and report upon the same from time to time.

The said Receivers are ordered to keep separate account upon their books of all payments made out of such special fund, and make report thereof to the court.

3. Until the further order of the Court in the premises, the Receivers, at their discretion, out of the income coming into their hands from the operation of the roads in their charge, which in their judgment can safely be used without prejudice to the payment of their own current liabilities for operating the property, are authorized at their discretion, to pay the accruing installments on car trust accounts and all maturing rental obligations assumed by the Richmond and Danville Railroad Company, on any of the leases or operating contracts upon the leased and operated roads now in the hands of the Receivers, whether such rental obligations are evidenced by coupons or guaranteed stock, dividends or otherwise.

The Court reserving full power at any time to set aside or modify this order as to rental payments upon the application of any party in interest, or of the Receivers, where such maturing coupons so issued constitute the rental or part of the rental of any leased line.

HUGH L. BOND,

Circuit Judge.

June 28, 1892.

And on another day, to-wit: the 13th day of July, 1892, came the Central Trust Company of New York and filed its petition, which petition is as follows:

**PETITION OF CENTRAL TRUST COMPANY TO BE MADE
PARTY TO SUIT.**

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA, IN EQUITY.

William P. Clyde, John C. Maben }
and William H. Goadby }
against }
Richmond and Danville Railroad }
Company, and others. }

To the Judges of the Circuit Court of the United States for
the Eastern District of Virginia, Sitting in Equity.

The petition of the Central Trust Company of New
York respectfully shows :

First. That your petitioner is a corporation created by
and existing under the laws of the State of New York, and
having its principal office for the transaction of its business
in the city of New York, in the said State of New York.

Second. That heretofore William P. Clyde, John C.
Maben and William H. Goadby, the complainants herein,
filed their bill in this court, sworn to on June 15, 1892,
praying, among other things, that the court should adminis-
ter the railroad, assets and property of the defendant, the
Richmond and Danville Railroad Company, and would for
such purpose marshal all its assets and ascertain the sev-
eral and respective liens and priorities existing upon each
and every part of the said system of railways, and the
amount due upon each and every of said mortgages or
other liens, and enforce and decree the rights, liens and
equities of each and all of the stockholders and creditors of
said Richmond and Danville Company, and of the defend-
ant the Richmond and West Point Terminal Railway and
Warehouse Company, and that the same might be finally
ascertained and decreed by the court upon the respective
interventions or applications of each and every of such
creditors or lienors in and to not only said lines of railroad,
appurtenances and equipments, but also to and upon each
and every portion of the assets and property of each of the
said corporations, and also for other and farther relief, as
by reference to said bill of complaint will more fully and
at large appear.

Third. That in and by said bill of complaint it was,
among other things, alleged that your petitioner is the
trustee in divers trust deeds executed by the said Danville
Company and divers roads in its system, and also trustee

for the six per cent. and five per cent. trust deeds of the said Terminal Company, which said allegation is true. That it is also further alleged in and by said bill of complaint that it became and was absolutely necessary for the friends of the property to loan and advance to the said Danville Company the sum of \$600,000 (called an "emergency loan"), which said loan or advance was made shortly prior to April 1, 1892, in order to prevent default and insolvency of the Danville Company on April 1, 1892, and that your petitioner is the trust depository under the agreement by which the income of the Danville system was pledged for the payment of the amount of said emergency loan when due; that said allegations in said bill contained are true.

Fourth. That on or about the 5th day of October, 1874, said Danville Company made, executed and delivered to Isaac Davenport, Jr., and George B. Roberts, as trustees, a certain deed of trust or mortgage bearing date on said last mentioned day, whereby said Danville Company mortgaged its railway and other properties for the purpose of securing payment of its bonds or obligations, to an amount not exceeding \$6,000,000, bearing interest at the rate of 6 per cent. per annum, payable half-yearly in gold coin of the United States of America; that bonds secured by said deed of trust or mortgage have been issued by said Danville Company, and are now outstanding in the hands of divers holders thereof to the aggregate amount of \$5,997,000 of principal; that said deed of trust or mortgage was duly recorded in the several offices wherein by law the same was entitled to be recorded, and constitutes a lien upon the mortgaged premises therein described. That the trustees named in said mortgage resigned, and that by an instrument in writing made, executed and delivered in accordance with and pursuance of the terms and provisions of said deed of trust, your petitioner was, on or about the 5th day of January, 1891, duly substituted as trustee of said deed of trust or mortgage of October 5, 1874, in place of the trustees therein named, with all the power and authority conferred upon the trustees named in said mortgage, and that your petitioner has, ever since said 5th day of January, 1891, acted as and discharged the duties of trustee under said deed of trust.

Fifth. That on the 1st day of July, 1892, a semi-annual instalment of interest upon said bonds so secured as aforesaid became due and payable to the holders of the coupons appertaining to the said bonds, but that default was made in the payment of said semi-annual instalment of interest,

and each and every part thereof, and said semi-annual instalment of interest remains still due, owing and unpaid.

Sixth. That on or about the 29th day of March, 1892, an agreement was made and entered into by and between your petitioner, the said Danville Company and the said Terminal Company, in pursuance whereof certain subscribers paid over to your petitioner the sum of \$600,000, and received from your petitioner negotiable certificates for the sum or sums paid by them, respectively, and your petitioner paid over to the said Terminal Company the sums so received by it, which said sums were thereafter in turn paid over by the Terminal Company to the Danville Company. That in and by said agreement the Danville Company agreed to pay to your petitioner, from time to time, all its net earnings not required for the maintenance and operation of its railroad, and for the payment of interest on securities, and other fixed charges, such payments to be credited upon the loan aforesaid, which was evidenced by a certain promissory note of the Danville Company dated March 30, 1892, payable to the order of the said Terminal Company, and by it endorsed. That in and by said agreement it was further provided that if repayment of the amount of the advances made in pursuance thereof should not have been duly made, when said promissory note should mature, your petitioner should, if properly indemnified by the subscribers, enforce the payment of the balance due upon said note, together with interest and commission, and together with its own reasonable commission and expenses, from the said Terminal and Danville Companies as endorser and maker of said note. That said note matured and became due and payable on June 1, 1892, and that on said last mentioned day the said Terminal Company waived protest and notice of protest thereof, and requested that no proceeding to enforce the payment thereof should be taken for fifteen days from said last mentioned date, in consideration whereof it guaranteed payment of said note, principal and interest. That no part of the said sum so advanced as aforesaid has been repaid by the said Danville Company, or said Terminal Company, and that the amount of said loan and advance is now due and payable, with interest.

Seventh. That by an order of this court made and entered in this suit on the 15th day of June, 1892, Frederick W. Huidekoper and Reuben Foster were appointed receivers of all and singular the property and assets of said Danville Company; that said receivers thereupon duly

qualified, and on or about the 16th day of June, 1892, entered into possession of all said property.

Eighth. Your petitioner further alleges that for the protection of the interests represented by it as aforesaid, it is necessary that your petitioner should be allowed to intervene in this suit, and have notice and an opportunity to be heard therein, for the protection of all the holders of the said six per cent. bonds of the Danville Company, and of the subscribers to said emergency loan, and that, as your petitioner is advised and believes, such interests require that the said receivership should be continued until the rights and interests of your petitioner in respect to the assets and property of the Danville Company shall have been ascertained, established and determined.

Wherefore your petitioner prays that an order may be made and entered permitting it to intervene in this suit, and to make and file such pleadings as it may be advised are necessary and proper in the premises.

And your petitioner will ever pray, &c., &c.

CENTRAL TRUST CO. OF NEW YORK.

By G. SHERMAN,
Vice-President.

BUTLER, STILLMAN & HUBBARD,
Solicitors for Petitioner.

ADRIAN H. JOLINE,
Of Counsel.

UNITED STATES OF AMERICA. }
Southern District of New York, } ss:
State, City and County of New York, }

George Sherman, being duly sworn, on oath says that he is the Vice-President of the Central Trust Company of New York, the petitioner named in the foregoing petition; that he has read the said petition by him subscribed, and that the matters therein set forth are true, according to the best of his knowledge, information and belief.

G. SHERMAN.

Sworn to before me this 11th day of July, 1892.

CHAS. FLYNN,
Notary Public,
N. Y. Co.

And on another day, to-wit : on the 6th day of August, 1892, came the complainants and filed a notice, which notice, with the return thereon, is as follows :

**NOTICE OF PRESENTING PETITION TO APPROVE EXTENSION
OF DEBT HOLDING COLLATERAL.**

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

Wm. P. Clyde et al.	}
against	
The Richmond and Danville Rail- road Company et al.	

Please take notice that at two o'clock P. M. August 6, 1892, or as soon thereafter as Counsel can be heard, the complainants will present their petition, duly verified, together with exhibits, to the Hon. Hugh L. Bond, at Chambers at Baltimore, Md., praying the court to enter an order in this cause approving a plan to secure an extension of credit on the floating indebtedness of the said Railroad Company, secured by divers bonds and stocks as collateral, and authorizing the execution and carrying out of such plan of extension by the delivery of certain papers and agreements by the proper officers of said Railroad Company and the payment of accrued and accruing interest upon the said indebtedness by the receivers.

You can attend at such time and place, if you desire, to show cause why the draft or order herewith served upon you should not be entered in the said cause.

WILLIAM P. CLYDE AND OTHERS,
Complainants.

HENRY CRAWFORD,
FRANK P. CLARK,
Solicitors.

Service accepted.

CENTRAL TRUST CO. OF N. Y.,
By G. SHERMAN.
RICHMOND & DANVILLE R. R. CO.,
RICHMOND & WEST P. T. R. & W. CO.,
By JOHN A. RUTHERFURD, Vice-Pres't.

The petition, with Exhibits "A", "B" and "C", referred to in the foregoing notice, is as follows :

**PETITION TO APPROVE EXTENSION OF DEBT HOLDING
COLLATERAL.**

CIRCUIT COURT OF THE UNITED STATES, EESTERN DIS-
TRICT OF VIRGINIA.

William P. Clyde and others	} In Equity.
<i>vs.</i>	
Ricemond & Danville Rail- road Company and others.	

To the Honorable Judges of said Court :

The complainants respectfully show to the court that besides its system of owned, leased and operated railways and equipment, which are now in the custody of the receivers of this court, the said Richmond and Danville Railroad Company is the owner of over \$5,000,000, par value, of divers stocks and bonds of several of the railway companies which are included in its system.

That long prior to the appointment of receivers herein the Richmond and West Point Terminal Railway and Warehouse Company loaned to the said Richmond and Danville Railroad Company divers stocks and bonds belonging to said Terminal Company, amounting, at the par value thereof, to nearly \$6,000,000, for the purpose of enabling the said railroad company to use the same as collateral.

Prior to the institution of this action the said Richmond and Danville Railroad Company had become indebted, for money loaned, to divers banks, trust companies, and others in the sum of about \$4,500,000, and had executed its negotiable paper to its several creditors to evidence the indebtedness due to them respectively, and had also pledged and delivered to them divers of the securities belonging to said railroad company, and also to said Terminal Company, and in its respective notes it was provided and agreed that each of said creditors should have the lawful right at any time, upon default, to sell the said pledged securities at public or private sale, and without notice. The general form of such promissory notes, and the power of sale over the pledged securities, is set forth in a copy of one of such notes, hereto annexed and made part hereof, as Exhibit A.

Some of said notes are payable on demand or call, and others are payable on time. Several of such notes have

matured according to their terms, and the payment of others has been demanded, and a large part of such obligations are now past due and in default, and many of the creditors holding the same have given notice that unless the payment, or some satisfactory adjustment of such past due obligations should be at once made, that they would proceed to enforce the power of sale vested in them, and sell out the securities held by them as collateral.

One of such creditors has already undertaken to enforce its power of sale, and the securities it held in pledge were sold at an average of only about fifty per cent. of their fair value, and apparently left a deficit of over forty per cent. of the original debt.

Other creditors of said class have brought suit to recover judgments at law upon their demands, and have issued attachments and undertaken to levy upon the interest and equity of redemption of the said railroad company in divers others of such pledged securities held by other creditors.

Complainant shows that the total of such outstanding indebtedness amounts to about \$4,434,450, exclusive of interest; that securities belonging to the said railroad company, amounting at the par thereof to \$4,747,000, and securities belonging to the said Terminal Company, amounting at the par thereof to \$5,861,000, had been pledged to the said creditors.

A schedule of such indebtedness and the names of the several creditors, and the character of the collateral which they respectively hold in pledge, is hereto annexed as Exhibit B.

Your petitioners are informed, and believe, that the present fair value of such collateral, even in the existing depressed condition of the security market, arising from the embarrassed financial condition of the properties and the pending receivership, is about \$6,410,620. Such surplus of about \$2,000,000 of value in such securities, over and above the debts for which they stand charged, constitutes an important portion of the trust estate in the hands of the receivers, and that by regular assignment in writing duly executed by the said railroad company, the legal title to all and singular the said pledged bonds and stocks has become vested in the receivers of this court.

Your petitioners further show that negotiations have been in progress for some time between divers of the said creditors holding such collateral, and it has been provisionally agreed with creditors holding over 90 per cent. of the said indebtedness that the said creditors will extend and

carry the said loans for the further term of two years on the following terms: That the said creditors, over and above six per cent. annual in interest, are to receive as compensation for such two years extension of credit the sum of $2\frac{1}{2}$ per cent. commission if the loan is paid within the first year of such extension, and a further $2\frac{1}{2}$ per cent. commission if the loan is not paid until in the second year of such extension, and that the proper officers of said railroad company should, with the assent of the court, execute and deliver to each such creditor a supplemental agreement of the general form and tenor of Exhibit C, herewith filed, agreeing that the present securities so in pledge should be held for the added compensation heretofore stated, as agreed upon, for the said two years forbearance and credit. And on the further condition that the court would direct its receivers, for the protection of that part of the receivership property so held in pledge from forced sale and great great sacrifice, to pay, from time to time, out of the income coming into their hands, the interest on such extended debt at the rate of six per cent. per annum.

Petitioners, after careful negotiation with all creditors holding such collateral, verily believe that all such \$4,434,450 of debt will agree to such extension of credit on the terms above stated, and thus the large surplus of value can be saved for the benefit of the receivership fund and the corporate creditors, and the trust can be saved from the enormous loss and sacrifice which would inevitably result if the creditors should resort to their power to sell out the collateral in their hands, and the company be also enabled to prevent a liability over to the Terminal Company for the market value of the bonds and stocks loaned by it to said railroad company, amounting to several millions of dollars. Your petitioners show that the sale of such collateral would increase the bonded debt on the Danville system over \$4,000,000.

Your petitioners, therefore, pray that the court will enter a proper order approving the said basis of adjustment for procuring the said two years' extension of credit aforesaid, and authorizing the said railroad company to execute proper instruments in writing with the several creditors to evidence such agreement and subject the said existing pledged bonds and stocks to the added charge of $2\frac{1}{2}$ or 5 per cent. agreed on as additional compensation for such forbearance and extension of credit, and will also direct and authorize the receivers in this cause to pay, from time to time, out of the money and income coming into their hands to keep down and pay the current interest at six

per cent. per annum upon such extended debt, and for all further proper relief.

WM. P. CLYDE.
JOHN C. MABEN.
WILLIAM H. GOADBY.
Complainants.

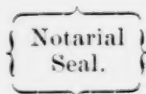
HENRY CRAWFORD,
FRANK P. CLARKE,
Solicitors.

STATE, COUNTY AND CITY OF NEW YORK, *ss* :

WILLIAM P. CLYDE, on oath, says that he is one of the complainants herein ; that he has read the foregoing petition and knows the contents thereof, and that the matters therein stated are true.

WM. P. CLYDE.

Subscribed and sworn to before me this 5th of August, 1892.



JAMES J. MURPHY,
Notary Public Kings Co.

Cert. filed in N. Y. Co.

EXHIBIT "A."

\$.....

New York;.....188 .

..... for value received..... promise to pay to or order, at the Western National Bank of the city of New York, dollars, with interest at the rate of per cent, per annum, said interest being payable having deposited with said bank as collateral security for payment of this note, reference being had to the endorsement hereon and in accordance with its terms, the following property, viz. :

..... the market value of which is now \$..... with the further right to call for additional security, in case there should be a decline in the market value thereof, and on failure to respond according to the tenor of this obligation, said obligation shall be deemed to be due and payable without demand or notice, with full power and authority to said bank to sell and assign and deliver the whole of the above mentioned security or any part thereof, or any substitute there-

for, or any additions thereto, at any brokers' board, or at public or private sale, at the option of said bank, or its president, or its cashier, or its or their assigns, on the non-performance of this promise, or the non-payment of any of the liabilities above mentioned, at any time or times thereafter, without demand, advertisement or notice; and after deducting all expenses for collection, sale and delivery, to apply the residue of the proceeds of such sale or sales so to be made, to pay any, either or all of the above mentioned liabilities, as said bank, or its president, or its cashier, or its or their assigns shall deem proper, returning the overplus to the undersigned.

.....

Pay to the order of the Western National Bank :

And further agree to the terms and conditions of the collateral obligation entered into by the maker of the within note and waive notice, demand and advertisement, and notice of any substitution of securities, and for value received, hereby guarantee the performance of the promise entered into by the maker of said note.

EXHIBIT B.

RICHMOND & DANVILLE RAILROAD COMPANY, BILLS PAYABLE.

1890.			
June 2.	Central Trust Company.	\$ 30,000	50,000 B. C. & R. Certs.
Oct. 1.	Central Trust Company.	100,000	124,900 B. C. & R. Stock.
1891.			
Jan. 14.	Central Trust Company.	50,000	50,000 B. C. & R. Certs.
			20,000 G. P. Con. Mtg.
			5,000 G. P. 6 per cent. Eqpt.
May 15.	Central Trust Company.	100,000	50,000 R. & D. 5 per cent. Con.
			50,000 E. T. 1st Mtg. Ex.
			50,000 R. & D. Eqpt. 6 per cent.
			15,000 G. P. 6 per cent. Eqpt.
May 18.	Central Trust Company.	50,000	76,000 G. P. 5 per cent. Eqpt.
			5,000 G. P. 6 per cent. Eqpt.
Aug. 24.	Central Trust Company.	100,000	50,000 G. P. 5 per cent. Eqpt.
			70,000 R. & D. 6 per cent. Eqpt.
			5,000 R. & D. 5 per cent. Con.
1890.			
Aug. 16.	First National Bank.	100,000	150,000 B. C. & R. Certs.
			25,000 G. P. 6 per cent. Eqpt.
Aug. 19.	First National Bank.	150,000	125,000 B. C. & R. Stock.
			50,000 R. & D. 6 per cent. Eqpt.
			50,000 G. P. 5 per cent. Eqpt.
			35,000 G. P. 6 per cent. Eqpt.
Oct. 17.	First National Bank.	100,000	110,000 E. T. 1st Pfd. Stk.
			50,000 E. T. 1st Mtg. Ex.
			45,000 R. & D. 5 per cent. Con.
			40,000 G. P. 6 per cent. Eqpt.
1891.			
Jan. 2.	Adams Express Company.	50,000	75,000 E. T. 1st Mtg. Ex.
			10,000 R. & D. 5 per cent. Con.
June 12.	Adams Express Company.	50,000	60,000 R. & D. 5 per cent. Con.
			20,000 E. T. 1st Mtg. Ex.
			10,000 G. P. Con. 2nd Mtg.
Nov. 16.	Adams Express Company.	100,000	80,000 R. & D. 5 per cent. Con.
			80,000 E. T. 1st Mtg. Ex.
			10,000 R. & D. 6 per cent. Eqpt.
Feb. 18.	Bank of America.	100,000	10,000 R. & D. 6 per cent. Eqpt.
			50,000 E. T. 1st Mtg. Ex.
			20,000 G. P. Con. 2nd Mtg.
			46,200 R. T. Common Stk.
			60,000 R. & D. 6 per cent. Eqpt.
			80,000 E. T. 2nd Pfd. Stk.
Jan. 25.	Nat'l Bank of Commerce.	150,000	200,000 C. Rd. 1st Mtg. 5 per cent.
			20,000 R. & D. 5 per cent. Con.
			20,000 R. & D. 6 per cent. Eqpt.
			70,000 R. & D. 6 per cent. Eqpt.
July 16.	Nat'l Bank of Commerce.	50,000	80,000 R. & D. 5 per cent. Con.
Sept. 30.	Chemical Nat'l Bank.	100,000	155,000 R. & D. 5 per cent. Con.
			10,000 R. & D. 6 per cent. Eqpt.
Nov. 28.	Fourth National Bank.	100,000	15,000 R. & D. 6 per cent. Eqpt.
			30,000 G. P. Con. 2nd.
			50,000 E. T. 1st Mtg. Ex.
			60,000 E. T. 2nd Pfd. Stk.
			30,000 Va. Mid. Stock.
			30,000 G. P. 5 per cent. Eqpt.
			36,000 R. & D. Eqpt. 6 per cent.
			15,000 G. P. Eqpt. 6 per cent.

RICHMOND & DANVILLE RAILROAD COMPANY, BILLS PAYABLE (Continued).

Nov. 28.	Fourth National Bank.	100,000	10,000 R. & D. 5 per cent. Con. 10,000 R. & D. 6 per cent. Eqpt. 280,000 E. T. 2nd Pfd. Stk. 110,000 E. T. 1st Pfd. Stk. 50,000 E. T. 1st Mtg. Ex. 20,000 G. P. 2nd Con. 40,000 Va. Mid. Stock.
Sept. 25.	Continental Trust Company.	30,000	40,000 E. T. 1st Mtg. Ex. 20,000 E. T. 1st Pfd. Stk. 7,000 W. & O. 2nd Mtg.
Nov. 18.	Seventh National Bank.	25,000	22,000 E. T. 1st Mtg. Ex. 22,000 G. P. 5 per cent. Eqpt.
Dec. 16.	C. M. Bolton.	35,000	25,000 W. & O. 1st Mtg. 45,000 G. P. 2nd Con.
1890. Dec. 29.	C. M. Bolton.	5,000	21,000 G. P. 5 per cent. Eqpt.
1891. June 17.	Jos. Bryan, trustee.	9,450	30,000 Va. Mid. Stock.
Dec. 26.	Chase National Bank.	100,000	50,000 R. & D. 6 per cent. Eqpt. 25,000 G. P. 2nd Con. 25,000 C. Rd. 1st Mtg. 20,000 E. T. 1st Pfd. Stk. 55,000 E. T. 1st Mtg. Ex. 10,000 Va. Mid. Stock. 12,000 G. P. 6 per cent. Eqpt.
1892. Jan. 1.	Inman, Swann & Co.	100,000	150,000 G. P. 6 per cent. Eqpt. 100,000 E. T. 2nd Pfd. Stk.
Jan. 12.	Moore & Schley.	100,000	50,000 E. T. 2nd Pfd. Stock. 55,000 E. T. Genl. Mtg. Bds. 50,000 R. T. 5 per cent. C. T. 10,000 R. & D. 5 per cent. Con. 20,000 R. & D. 6 per cent. Equipt. 200,000 R. T. Common Stock. 50,000 E. T. 2nd Pref. Stk.
Feb. 25.	Moore & Schley.	100,000	50,000 E. T. 1st Pfd. Stk. 300,000 E. T. 2nd Pref. Stk. 100,000 Va. Mid. Stock. 100,000 R. T. Com. Stock. 12,000 G. P. 6 per cent. Equipt. 50,000 C., C. & A. Stock.
Feb. 26.	Bank of America.	50,000	60,000 G. P. 6 per cent. Equipt. 15,000 C. R. R. 5 per cent. Bonds. 10,000 Va. Mid. Stock.
Mar. 22.	Central Trust Company.	40,000	4,000 G. P. 5 per cent. Equipt. 24,000 G. P. 6 per cent. Equipt. Bds. 31,000 R. & D. 5 per cent. Con. Bds. 30,000 Va. Mid. Stock. 10,000 E. T. 1st Pfd. Stk.
Mar. 24.	Work, Strong & Co.	50,000	30,000 R. & D. 5 per cent. Con. 30,000 G. P. 6 per cent. Equipt. 30,000 Va. Midland Stk. 30,000 E. T. 2nd Pref. 10,000 E. T. 1st Pref. Stk.
Mar. 29.	Myers, Rutherford & Co.	15,000	15,000 W., O. & W. 1st Mtg. 10,000 Va. Midland Stk. 30,000 E. T. 1st Pref. Stk.

RICHMOND & DANVILLE RAILROAD COMPANY, BILLS PAYABLE (Continued)

Apl. 6.	Union Trust Company.	85,000	50,000 W., O. & W. 1st Mtg. 30,000 R. & D. 5 per cent. Consol. 40,000 R. & D. 6 per cent. Equipt. 40,000 E. T. 1st Pref. Stk. 100,000 E. T. 2nd Pref. Stk. 50,000 Va. Midland Stk.
June 3.	Inman, Swann & Co.	200,000	80,000 C. R. R. 5 per cent. Con. 100,000 Va. Midland Stk. 270,000 E. T. 2nd Pref. Stk. 52,000 R. & D. 6 per cent. Equipt. 12,000 E. T. 1st Mtg. 6,000 State of Ga. 3½ per cent. 35,000 W., O. & W. 1st Mtg. 90,000 R. & D. 5 per cent. Con.
June 3.	Union Trust Co.	100,000	110,000 R. & D. 5 per cent. Con. 30,000 E. T. 1st Mtg. Ex. 60,000 Va. Mid. Stock.
Feb'y 10.	Alex. Laird & Wm. Grey, Ag'ts Canadian Bk. of Commerce.	100,000	50,000 W., O. & W. 1st Mt. 50,000 G. P. Cons. 2nds. 50,000 R. & D. 6 per cent. Equipt. 20,000 R. & D. 5 per cent. Con. 30,000 Va. Midland Stk.
1891. July 30	Adams Express Company.	100,000	100,000 R. & D. 5 per cent. Con. 65,000 E. T. 1st. Mtg. Ex.

\$2,824.450

TIME.

Due 1892			
June 21.	Western National Bank.	\$ 200,000	60,000 R. & D. 6 per cent. Eqpt. 60,000 R. & D. 5 per cent. Con. 30,000 E. T. 1st Ex. 30,000 G. P. Cons. 2nd. 20,000 C. R. R. 1st Con. 50,000 G. P. 6 per cent. Eqpt. 50,000 E. T. 5 per cent. G. M. 50,000 V. M. Stock.
June 20.	Liberty National Bank.	100,000	50,000 R. & D. 6 per cent. Eqpt. 50,000 R. & D. 5 per cent. Con. 50,000 G. P. 2nd Con. 50,000 Va. Mid. Stock.
June 20.	National City Bank.	100,000	50,000 E. T. 1st Ex. Mtg. 25,000 W. & O. 1st Mtg. 61,000 R. T. 5 per cent. Col. Tr. 35,000 R. & D. 5 per cent. Con. 10,000 G. P. 2nd Con. 20,000 Va. Mid. Stock.
June 25.	Kings County Trust Co.	50,000	35,000 R. T. 5 per cent. C. T. 30,000 R. & D. 5 per cent. Con. 15,000 E. T. Genl. Mtg. 50,000 R. & D. 6 per cent. Eqpt. 10,000 Va. Mid. Stock. 5,000 R. & D. 6 per cent. Eqpt. 5,000 W. & O. 1st Mtg.

TIME (Continued).

June 28.	Chemical National Bank.	100,000	50,000 R. T. 5 per cent. C. T. 60,000 R. & D. 5 per cent. Con. 35,000 R. & D. 6 per cent. Eqpt. 20,000 E. T. 1st Pfd. Stk. 10,000 G. P. 6 per cent. Eqpt. 10,000 Va. Mid. Stock.
June 29.	National Park Bank.	100,000	50,000 R. T. 5 per cent. C. T. 60,000 R. & D. 5 per cent. Con. 35,000 R. & D. 6 per cent. Eqpt. 20,000 E. T. Pfd. Stk. 1st. 10,000 G. P. 6 per cent. Eqpt. 10,000 Va. Mid. Stock.
June 28.	Peoples Trust Company.	100,000	90,000 R. T. 5 per cent. Col. Tr. 50,000 R. & D. 5 per cent. Con. 30,000 E. T. Gen. Mtg. 10,000 G. P. 6 per cent. Eqpt. 20,000 Va. Mid. Stock.
June 30.	Manhattan Trust Company.	50,000	25,000 R. T. 5 per cent. C. T. 40,000 E. T. Gen. Mtg. 10,000 R. & D. 6 per cent. Eqpt. 15,000 R. & D. 5 per cent. Con.
June 30.	Manhattan Trust Company.	50,000	25,000 R. T. 5 per cent. C. T. 40,000 E. T. Gen. Mtg. 9,000 R. & D. 6 per cent. Eqpt. 15,000 R. & D. 5 per cent. Con.
June 20.	Kings County Trust Co.	50,000	10,000 R. & D. 6 per cent. Eqpt. 30,000 E. T. 1st Mtg. Ex. 35,000 R. & D. 5 per cent. Con. 20,000 Va. Mid. Stock. 5,000 R. & D. 6 per cent. Eqpt.
July 15.	State Trust Company.	200,000	210,000 State Ga. 3½ per cent. 55,000 R. & D. 5 per cent. Con.
July 18.	Seventh National Bank.	30,000	25,000 R. & D. 6 per cent. Eqpt. 20,000 R. & D. 5 per cent. Con.
July 26.	Planters National Bank.	30,000	20,000 G. P. Con. 2nd Mtg. 10,000 E. T. 1st Mtg. Ex. 20,000 R. & D. 6 per cent. Eqpt.
July 7.	National Bank Republic.	100,000	45,000 G. P. Con. 2nd Mtg. 35,000 E. T. 1st Mtg. Ex. 200,000 E. T. 2nd Pfd. Stock. 70,000 Va. Mid. Stock. 20,000 R. & D. 5 per cent. Con.
Nov. 2.	Mutual Life Ins. Co.	350,000	438,000 State Ga. 3½ per cent.

\$1,610,000

EXHIBIT C.

This agreement witnesseth :

That whereas, the Richmond and Danville Railroad Company is indebted to the _____ of _____ in the sum _____ dollars, evidenced by a promissory note of said Railroad Company for said amount dated _____, by the terms of which note divers securities were pledged for the payment of such debt, and with power on default to sell the same without notice at public or private sale; and

Whereas, the said Railroad Company has requested the said _____ to extend the said loan and carry the same.

It is therefore agreed, for the consideration hereafter stated, that the said _____ will and does hereby extend the time of payment of such indebtedness until the _____ day of _____, 1894, and hereby agrees to carry the loan to that date unless the said Railroad Company shall sooner desire to pay off the same, which option of payment before maturity the said Railroad Company shall have the right at any time to exercise on the terms of payment hereafter stated.

In consideration of such extension of credit and the agreement to forbear the present enforcement of the aforesaid debt, the said Railroad Company agrees to pay the said interest upon such extended loan at the rate of six per cent. per annum until paid, and to also pay as additional compensation for such forbearance, the sum of two and one-half per cent. upon the face of such loan, if the said Railroad Company shall exercise the aforesaid option and pay off the said loan prior to the _____ day of _____, 1893; but if the said loan shall not be paid off prior to the said last mentioned date, then the said Railroad Company, in addition to the aforesaid covenanted interest, shall pay, as compensation for such forbearance, the sum of five per cent. upon the face of such loan.

All the securities specified in the above described note, dated _____, shall stand pledged, on the conditions and terms therein stated, for the payment of the additional compensation and commission for such forbearance herein agreed to be paid, to all intents and with like effect as if recited in the said original note.

And thereupon the following order was entered :

**ORDER ON PETITION TO APPROVE EXTENSION DEBT
HOLDING COLLATERAL, &c.**CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

William P. Clyde and others	} In Equity.
<i>vs.</i>	
Richmond and Danville Railroad Company and others.	

Now, on this 6th day of August, 1892, come the complainants, by their solicitors, and file their petition in writing, duly verified, together with exhibits, praying the court to enter an order approving a proposed agreement with divers creditors of the said Railroad Company holding collateral for their debts, whereby an extension of such debts can be secured and a sacrifice of securities and a large increase of the bonded indebtedness of the Railroad System, now operated by the receivers in this cause, can be prevented. And it appearing to the court that due notice of this application has been served upon the said railroad company and the Richmond and West Point Terminal Railway and Warehouse Company and the Central Trust Company, the court, having duly considered such petition and exhibits, and it appearing that it will be for the best interest and protection of the trust estate in the hands of the receivers to grant the prayer of such petition, it is therefore ordered and decreed that the court hereby approves the plan of procuring the extension of the class of corporate indebtedness set forth in the said petition, for which divers stocks and bonds, the legal title to which has been by assignment vested in the receivers, are now pledged, and hereby authorizes the said Richmond and Danville Railroad Company, by its proper officers, to sign, seal, execute and deliver to any of the several corporate creditors who hold stocks and bonds, or either, as collateral to their demands, or their assigns, which debts are set forth in the schedules attached to such petition, a supplemental agreement, in writing, of the general form and tenor of the exhibit attached to such petition, whereby the stocks and bonds now held as collateral security for their respective demands and interest thereon, shall, in consideration of such agreed extension and forbearance, be held as also pledged for the additional sum of two and a half per cent. of the face value of such debt, agreed to be paid as compensation for the agreed forbearance of such debt, if paid within one year, and also for the further sum of $2\frac{1}{2}$ per cent., making five per cent. in all

agreed to be paid for the forbearance of such debt, if not paid within one year.

The court further orders that the receivers, out of the income coming into their hands, not necessary to discharge former orders of court, from time to time, during the term of such extension, pay to the several creditors of the class mentioned in such petition, and entering into such agreement of extension the present past due and accruing interest on their respective debts and claims at the rate of 6 per cent. per annum.

HUGH L. BOND,
Circuit Judge.

And on another day, to-wit: On the 12th day of August, 1892, came F. W. Huidekoper and Reuben Foster, receivers, and presented a report, which report is in the words and figures following, to-wit:

REPORT OF RECEIVERS.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

William P. Clyde and others against The Richmond & Danville Railroad Company, The Richmond & West Point Terminal Rail- way and Warehouse Company.	}	In Equity.
---	---	------------

To the Hon. Hugh L. Bond, Judge of the said Court, in Equity sitting:

The receivers appointed by your Honor, in the above entitled case, on the 15th day of June, A. D. 1892, would respectfully report that, under the orders and instructions of the honorable court, they took possession of all the property of the Richmond and Danville Railroad Company, being the system of railways in the possession of, and owned, operated or controlled by the said corporation, situate in the District of Columbia, and in the States of Virginia, North Carolina, South Carolina, Georgia, Alabama and Mississippi, together with all the equipment, shops, appurtenances of every kind, including real estate, warehouses, offices held or owned by said railroad, and all steamers, wharves, etc., all moneys, and leasehold interests or operating contracts, and all other property, real, personal and mixed, held or possessed by said Railroad Company, and have continued the operation of said railroad system and steamer lines, and conducted the business of

common carriers of passengers and freight as obligatory upon said companies.

Your receivers would report that they were appointed receivers also by his Honor, Wm. T. Newman, U. S. Judge of the Northern District of Georgia, on June 16th, after the consideration by said judge of the bill and certified copy of the order entered by your Honor in the Eastern District of Virginia. Also, that ancillary orders were entered by the Circuit Court of the Northern District of Alabama (Southern Division), and also by the Circuit Court of the District of Mississippi.

The Richmond and Danville Railroad, proper,	
is, 140 miles long, with a branch 12 miles	
in length, while acquisition of stock or	
written leases has given the system a total	
mileage of	3,320 miles.
Which, with a steamboat line of	200 "
	<hr/>
Gives a grand total of	3,520 "

Reference is made to pages 2 and 3 of the printed copy of the original bill in this case for detail thereof: also to the attached statements showing the mileage of each road in the Richmond and Danville system, the amount of bonds or guaranteed stock issued by each, and the status of each road, whether "controlled by the Richmond and Danville Railroad Company," "leased for fixed rental," "guaranteed endorsement," or under "leases or operating contracts."

We also attach statement showing the "fixed charges" of each of the properties.

The receivers report that there was turned over to them by the Railroad Company, on June 16th, the sum of \$480,427.91.

UNPAID PAY-ROLLS.

The receivers found, on June 16, 1892, the unpaid pay-rolls amounted to \$619,596.59. Of this, since June 17th, there has been paid \$602,281.85, leaving, at this time, \$17,314.74. This is being reduced each day, and will in a few days be entirely paid.

TAXES, TRAFFIC AND CAR MILEAGE BALANCES, CLAIMS, ETC.

They also found that the indebtedness of the company

for taxes, traffic and car mileage balances, loss and damage claims, and for voucher and supply accounts was (quoting from the report of the expert and master, as made to the honorable court July 23, 1892), as follows:

"We, the undersigned, auditors and masters, appointed under the order of June 28, 1892, in the above entitled cause, beg to report upon examination of claims against the Richmond and Danville Railroad Company, aggregating \$1,244,510.93, details of which will be found in the accompanying report.

This report is classified into nine groups, to-wit:

1. Supplies and operating accounts subsequent to December 17, 1891,	\$771,528 94
2. Taxes,	4,447 00
3. Supplies and operating accounts subsequent to Dec. 17, 1891, Macon & Northern R. R.,	3,840 03
4. Supplies subsequent to Dec. 17, 1891, not divisible between the Central Railroad of Georgia and the Richmond and Danville R. R.,	179,789 82
5. Miscellaneous accounts, not divisible as to dates,	3,837 22
6. Supplies and operating accounts prior to December 17, 1891,	234,529 53
7. Supplies and operating accounts prior to Dec. 17, 1891, Macon & Northern R. R.,	497 32
8. Supplies prior to Dec. 17, 1891, not divisible between the Central Railroad of Georgia and the Richmond and Danville R. R.,	45,882 25
9. Taxes Macon & Northern R. R.,	158 82
Total,	<u>\$1,244,510 93"</u>

FLOATING DEBT.

The floating indebtedness of the company we found to be of loans due sundry banks in New York and to individuals:

On demand,	\$2,824,450
Time loans,	1,610,000
Total,	<u>\$4,434,450</u>

Being due to the following banks, firms or individuals, viz.:

ON DEMAND.

Central Trust Company,	\$470,000
First National Bank,	350,000
Adams Express Company,	300,000
Bank of America,	150,000
National Bank of Commerce,	200,000
Chemical National Bank,	100,000
Fourth National Bank,	200, 0
Continental Trust Company,	30,000
Seventh National Bank,	25,000
Chase National Bank,	100,000
Union Trust Company,	185,000
Alex. Laird and Wm. Grey, Agents, Canadian Bank of Commerce,	100,000
Inman, Swann & Co.,	300,000
Moore & Schley,	200,000
Work, Strong & Co.,	50,000
Myers, Rutherford & Co.,	15,000
C. M. Bolton, Washington, D. C.,	40,000
Joseph Bryan, Trustee, Richmond, Va.,	9,450
	<hr/>
	\$2,824,450

TIME LOANS.

Western National Bank,	\$200,000
Liberty National Bank,	100,000
National City Bank,	100,000
Kings County Trust Company,	100,000
Chemical National Bank,	100,000
National Park Bank,	100,000
Peoples Trust Company,	100,000
Manhattan Trust Company,	100,000
State Trust Company,	200,000
Seventh National Bank,	30,000
National Bank of Republic,	100,000
Mutual Life Insurance Company,	350,000
Planters National Bank, Richmond, Va.,	30,000
	<hr/>
	\$1,610,000

These loans are secured by the following described securities owned by and belonging to the Richmond and Danville Railroad Company :

B. C. & R. Certificates,	\$250,000
B. C. & R. Stock,	249,900
G. P. Con. 2nd Mtg. Bonds,	385,000
R. & D. five per cent Con. Bonds,	1,486,000
R. & D. 6 per cent. Equip. Bonds,	173,000
R. & D. 5 per cent. Equip. Bonds,	10,000
G. P. 6 per cent. Equip. Bonds,	461,000
G. P. 5 per cent. Equip. Bonds	253,000
E. T. 1st Mtg. Ex. Bonds,	200,000
C. R. R. 1st Mtg. 5 per cent. Bonds,	340,000
W. & O. 1st. Mtg. Bonds,	180,000
W. & O. 2nd Mtg. Bonds,	32,000
Rich. Term. 5 per cent. Coll. T. R. Bonds,	386,000
C. C. & A. Stock,	50,000
	————— \$4,455,900

And by the following securities, belonging to the Richmond and West Point Terminal Railway and Warehouse Co., loaned to the Richmond and Danville R. R. Co. to assist in carrying these loans :

R. & D. 6 per cent. Equip. Bonds,	\$708,000
E. T. 1st Mtg. Ex. Bonds,	601,000
E. T. Gen. Mtg. Bonds,	230,000
E. T. 1st Mtg. Bonds,	12,000
E. T. 1st. Pref. Stock,	444,000
E. T. 2nd Pref. Stock,	1,620,000
Va. Mid. Stock,	810,000
State of Georgia 3½ per cent. Bonds,	654,000
Rich. Term. Common Stock,	346,200
G. P. six per cent. Equip. Bonds,	47,000
	————— \$5,468,200

The receivers are informed that some of the friends of the company, who are largely interested in the success and outcome of the Richmond and Danville system, have about perfected an arrangement with the holders of the loans to extend the time of payment of them for two years. This will, if accomplished, prevent the sacrifice of any of the securities at the present time.

EMERGENCY LOAN.

The above statement does not include the claim set out in the bill of complaint in this cause (see sec. 32 and 33) for money borrowed in March last, to the amount of \$567,000.

When the "Emergency Loan" was not paid by the Railroad Company, and none of the revenue deposited with the

Central Trust Company, as agreed, certain of the holders of the loan made a verbal agreement with the officers of the company by which all of the bonds, stocks, etc., of the Railroad Company, still unused, were pledged and to be held as security for this "Emergency Loan," and certain memoranda attached to the securities were made by the vice-president.

The officers of the company turned over to the receivers the following bonds, stocks, certificates of indebtedness, bills receivable, etc., subject to the above-mentioned pledge, and the receivers have put these securities in a safe in the Safe Deposit Company, No. 2 Wall street, New York, exclusively under their control. Most of these securities are of very doubtful value.

STATEMENT OF SECURITIES

Belonging to the Richmond & Danville R. R. Co.

Chester & Lenoir 1st Mtg. Bonds,	\$ 500 00
Cheraw & Chester 1st Mtg. Bonds,	500 00
Georgia Pacific Consol. 2nd Mtg. Bonds,	1,000 00
Rich. & W. P. Term. Ry. & W. H. Co. 5 per cent. Bond Scrip,	100 00
Danville & New River Stock,	1,700 00
International Cotton Exposition Stock,	5,000 00
Yorktown Centennial Association Stock,	1,000 00
North Carolina State Exposition Stock,	800 00
Atlanta & Richmond Air Line Stock,	407,900 00
Farmers' L. & T. Co. Cfs. of Deposit,	4,240,000 00
Richmond & W. Pt. Term. Preferred Stock,	33 33
Columbia & Greenville Cfs. of Indebtedness,	492,604 52
Char. Cola. & Augusta Cfs. of Indebtedness,	208,970 98
Western North Carolina Cfs. of Indebtedness,	1,178,755 29
Chester Agricultural Association Stock,	100 00
North Carolina State Exposition,	100 00
Chester & Lenoir Stock,	165 85
N. E. R. R. of Ga. Cfs. of Indebtedness,	21,386 65
C. R. R. & B. Co. of Ga. 5 per cent. Bonds,	48,000 00
Virginia Midland Ry. 1st Pref. Stock,	2,618 34
Piedmont Exposition Stock,	1,000 00
Norfolk & Carolina R. R. Stock,	295,800 00
Rich. & W. Pt. Term. Ry. & W. H. Co. Com. Stock,	560 00
Macon & Northern R. R. Stock,	500,000 00
Piedmont Railroad Stock,	10,300 00
Milton & Sutherland Stock,	36,400 00
State University Stock,	16,800 00

Northwestern North Carolina R. R. Stock,	996,500 00
Clarkesville & North Carolina R. R. Stock,	100,000 00
Oxford & Clarkesville R. R. Stock,	890,000 00
Charlotte, Columbia & Augusta R. R. Stock,	10,000 00
High Point, Randleman, Ashboro & S. R. R. Stock,	212,500 00
Elberton Air Line Stock,	100,200 00
Lawrenceville R. R. Stock,	22,600 00
Roswell R. R.,	20,100 00
Yadkin R. R. Stock,	462,750 00
Danville & Western Ry. Stock,	368,600 00
Hartwell R. R. Stock,	13,000 00
Cheraw & Chester Guaranteed Stock,	50,400 00
Blue Ridge R. R. Bonds,	197,000 00
Roanoke Valley R. R. Bonds,	23,500 00
Hall County Georgia 8 per cent. Bonds,	57,100 00
Charleston, Cincinnati & Chicago 1st Mtg. Bonds,	20,000 00
N. W. N. C. R. R. Cts. of Indebtedness,	500 00

BILLS RECEIVABLE.

Notes of R. T. Co., March 30, '92,	65,700 00
March 8, "	50,000 00
March 4, "	50,000 00
April 18, "	10,500 00
May 28, "	12,000 00
April 16, "	6,000 00
	<hr/> 194,200 00
Notes of C. R. R. &	
Bkg. Co. of Ga., Novm. 11, '91,	50,000 00
	50,000 00
	50,000 00
	44,306 83
	<hr/> 194,306 83

CAR TRUSTS.

The Richmond and Donville R. R. Co. has also outstanding of Equipment Trusts Obligations,	\$895,100 00
---	--------------

GUARANTEES.

The Richmond and Danville R. R. Co. has also guaranteed, by endorsement, the Georgia Pacific Equipment 5 per cent. Gold Bonds, and Georgia Pacific 6 per cent. Equipment Trusts, of which there are outstanding, \$1,952,000 00	
---	--

Guarantees as to principal and interest jointly by the Richmond and Danville R. R. and The Central R. R. & Bkg. Co. of Georgia. Macon & Northern R. R. 1st Mortgage four- and-a-half per cent. Bonds, due March 1, 1990,	2,200,000 00
The Richmond and Danville R. R. Co. is the joint maker with the East Tennessee, Vir- ginia and Georgia Railway Co. of "East Tennessee, Virginia & Georgia, Cincinnati Extension Mortgage 5 per cent. Bonds," due February 1, 1940,	\$6,000,000 00

These last named bonds are endorsed by the Richmond and West Point Terminal Railway and Warehouse Company, and secured by the deposit with the trustee of a majority of the stock of the Alabama Great Southern Railroad Company, Limited (controlling the Cincinnati Southern Railway and The Alabama Great Southern Railroad). The principal and interest of these bonds, under agreement between The East Tennessee, Virginia and Georgia Railway Co. and The Richmond and Danville R. R. Co., are primarily assumed by the former company.

BANKS.

The receivers would respectfully report that, in pursuance of the orders of the court, they have selected The National Metropolitan Bank, of Washington, and, at present, The Fourth National Bank, of the city of New York, as the principal depositories of moneys of the receivers.

They have also a small balance in the First National Bank, of New York, The Chase Bank, of New York, The National Bank of Commerce, and the Chemical Bank, of New York, which were turned over to them by the Railroad Company at these banks.

They would also report that, as it is the custom of most railroad companies to deposit the daily receipts by agents and others in the places where the collections are made, in order that the locality shall not be drained of money, they have continued daily deposits to be made in the following mentioned banks :

Planters National Bank, Richmond, Va.
First National Bank, Alexandria, Va.
Peoples National Bank, Lynchburg, Va.
W. S. Patton, Sons & Co., Danville, Va.

First National Bank, Winston, N. C.
Citizens National Bank, Raleigh, N. C.
Davis & Wiley Bank, Salisbury, N. C.
National Bank of Asheville, Asheville, N. C.
First National Bank, Charlotte, N. C.
Bank of Chester, Chester, S. C.
Loan and Exchange Bank, Columbia, S. C.
National Bank of Athens, Athens, Ga.
Atlanta National Bank, Atlanta, Ga.
First National Bank, Anniston, Ala.
Columbus Ins. and Banking Co., Columbus, Miss.
Citizens Bank, Winona, Miss.
First National Bank, Greenville, Miss.

And the Treasurer checks daily against these accounts in the payment of pay-rolls and bills due in each locality, or requires, when there is much of a surplus held by any these banks, that they shall remit to him for deposit at the bank in Washington or in New York. The receivers would respectfully request the approval of your Honor to this method of handling the moneys of the receivers.

We herewith give copy of the order made by his Honor, Judge Newman, in reference to the deposit of moneys in Georgia :

“ Upon further consideration of the bill and certified copy of the order of the Circuit Court of the United States for the Eastern District of Virginia, in the above stated cause, it is ordered that, so far as the Northern District of Georgia is concerned, the said order is modified in one particular, to-wit : All moneys collected by agents of the receivers within the jurisdictional limits of said district are to be deposited, until the further order of the court herein, in some solvent bank or banks at Athens, Ga., or Atlanta, Ga., or both, subject to such rules and regulations for keeping the accounts as may be framed by the receivers ; and said moneys thus deposited to be subject to the order of the receivers, under direction of the court, from time to time.

The receivers or their counsel may, at any time, upon five days' notice to the complainants, or their counsel, move before me to have this order set aside or modified, as may be shown to be proper or necessary.”

RECEIVERS' CERTIFICATES.

In pursuance of the order of this Honorable Court of June 28, 1892, the receivers have up to this date issued and

sold \$680,000 of Receivers' Certificates, bearing 6 % interest and payable in one and two years.

\$200,000 of the certificates were sold at par	
and accrued interest, realizing	\$200,164 38
\$480,000 were sold at 101 flat, realizing	484,800 00
	<hr/>
Making a total of	\$684,964 38

We give below a list of the certificates as issued :

Provident Life and Trust Co., Philadelphia, No. 3, 1 year,	\$50,000
Land Title and Trust Co., Philadelphia, No. 4, 1 year,	50,000
Penn National Bank of Philadelphia, No. 5, 1 year,	50,000
Central National Bank of Philadelphia, No. 6, 1 year,	50,000
Mercantile Trust and Deposit Co. of Baltimore, 10 of \$10,000 each, Nos. 7 to 16, 1 year, 10 of \$10,000 each, Nos. 17 to 26, 2 years,	200,000
National Mechanics' Bank of Baltimore, 6 of \$10,000 each, Nos. 20 to 32, 1 year, 6 of \$10,000 each, Nos. 33 to 38, 2 years, 2 of \$2,500 each, Nos. 39 to 40, 1 and 2 years,	125,000
First National Bank of Baltimore, 50 of \$1,000 each, Nos. 52 to 101, 1 year, 50 of \$1,000 each, Nos. 101 to 151, 2 years,	100 000
National Union Bank of Maryland, 2 of \$5,000 each, Nos. 41 to 42, 1 year, 3 of \$5,000 each, Nos. 43 to 45, 2 years,	25,000
Citizens' National Bank of Baltimore, 3 of \$5,000 each, Nos. 46 to 48, 1 year, 3 of \$5,000 each, Nos. 49 to 51, 2 years,	30,000
	<hr/>
Total,	\$680,000

The receivers are paying daily, from this "Special Fund," the vouchers approved by the Expert and Master.

INTERESTS, RENTALS AND CAR TRUSTS.

Under the orders of the Honorable Court, the receivers have paid, or deposited for payment, the interest and rentals and car trust rentals, due July 1, 1892, as follows :

Atlanta and Charlotte Air-Line rental,	\$148,750
Richmond, York River and Chesapeake Stock,	10,653
Richmond, York River and Ches. 1st Mortgage Bonds,	16,000
Western North Carolina 1st Consol. Mtg. Bonds,	74,250
Charlottesville and Rapidan Rental,	17,625
Franklin and Pittsylvania Rental,	2,520
Charlotte, Columbia and Augusta 1st Mtg. Bonds,	70,000
Charlotte, Columbia and Augusta 1st Consol. Mtg. Bonds,	15,000
Chester and Lenoir 1st Mortgage Bonds,	9,125
Cheraw and Chester 1st Mortgage Bonds,	3,500
Columbia and Greenville 1st Mortgage Bonds,	60,000
Spartanburg, Union and Columbia Rental,	25,000
Georgia Pacific 1st Mortgage Bonds,	169,800
Roswell Railroad,	1,127
North Carolina R. R. Rental,	130,000
Car Trusts,	26,989
Total,	<hr/> \$780,339

Also the following, due August 1, 1892 :

Washington, Ohio and Western 1st Mtg. Bonds,	\$20,000
Georgia Pacific Equipment Trust,	28,000
Georgia Pacific S. Fund,	31,635
Richmond and Danville Equipment Trust,	19,840
Total,	<hr/> \$99,475

LOAN TO RICHMOND AND WEST POINT TERMINAL RAILWAY AND WAREHOUSE COMPANY.

The Richmond and West Point Terminal Railway and Warehouse Company is indebted to the Richmond and Danville R. R. Co. for loans to the amount of about \$181,000, represented by the notes of that company, as scheduled in list of securities (bills payable) turned over to the receivers.

CENTRAL RAILROAD OF GEORGIA.

On June 1, 1891, the Georgia Pacific Railway Company leased all of the property and steamship lines owned and controlled by the Central Railroad and Banking Company of Georgia for the term of ninety-nine years. Under a contract with The Georgia Pacific Railway Company, The Richmond and Danville Railroad Company assumed the operation of the Central Railroad and Steamship Line simultaneously with the lease by The Georgia Pacific Railway Company. The Central Company required The Georgia

Pacific Company to give a bond in the sum of \$1,000,000 for the faithful performance of the covenants of the lease and "to be held as security for the payment of any loss, injury or damage which might accrue by reason of any breach of any of the covenants," and The Richmond and Danville Railroad Company became the guarantor or surety upon the bond.

The operations of the road continued until March 4, 1892, when the United States Circuit Court for the Southern District of Georgia (Northeastern Division) appointed E. P. Alexander temporary receiver of The Central Railroad and Banking Company System of Railroads.

The accounts of The Richmond and Danville Railroad Company are very much mixed up with the accounts properly belonging to The Central Railroad and Banking Company. In May, 1892, Mr. S. M. Williams, Second Vice-President and Controller of The Central Railroad Company of New Jersey and the Port Reading Railroad Company, an expert railroad accountant, was employed by the Richmond and Danville Railroad Company to examine and report upon the status of accounts between said companies. After an examination, mostly taken from the books of The Richmond and Danville Railroad Company, Mr. Williams reported that there was due to The Richmond and Danville Railroad Company the sum of \$2,316,906.65. On the other hand, the receiver, H. M. Comer, of The Central Railroad and Banking Company, in a statement of account against The Richmond and Danville Railroad Company, made to the court, makes an account which he claims to be due from The Richmond and Danville Railroad Company to The Central Railroad of over \$2,452,670.27, thus making a discrepancy between the amounts claimed between the two companies of nearly \$4,800,000. These accounts require the careful and patient consideration of an expert.

The total of vouchers of The Central Railroad and Banking Company, in the office of The Richmond and Danville Railroad Company, unpaid, is about \$515,000.

SPEYER LOAN.

In November, 1891, The Central Railroad and Banking Company of Georgia got into financial difficulty, and a syndicate in New York subscribed about \$3,700,000 as a loan to that company, for one year, called "The Speyer Loan." The Central Railroad and Banking Company of Georgia gave its General Mortgage 5 % Bonds, at fifty cents on the dollar, as collateral security for the loan.

The Richmond and Danville Railroad Company subscribed \$194,306.83 towards this loan, and received as se-

curity \$388,000 of The Central Railroad and Banking Company's 5 % General Mortgage Bonds, \$340,000 of which are re-hypothecated as security for Richmond and Danville loans and \$48,000 (as previously reported) are on hand.

MACON AND NORTHERN RAILROAD.

During 1891 The Richmond and Danville Railroad Company became the guarantor, as previously referred to, with The Central Railroad and Banking Company of Georgia, of the entire issue of \$2,200,000 of the First Mortgage 4½ % Bonds, due March 1, 1990, of The Macon and Northern Railroad, extending from Macon to Athens, Ga. The Macon and Northern Railroad was leased, on June 15, 1891, for 99 years, jointly by The Richmond and Danville Railroad Company and The Central Railroad and Banking Company of Georgia. In this transaction The Richmond and Danville Railroad Company received one-half of the total capital stock of The Macon and Northern Railroad Company and \$150,000 in cash for the improvement of the road. The operation of The Macon and Northern Railroad was not assumed by The Richmond and Danville Railroad Company until about July 1, 1891, and on May 19, 1892, it was turned over to a Board of Directors, one-half of whom were selected by The Richmond and Danville Railroad Company and one-half by The Central Railroad and Banking Company of Georgia.

The revenues of the road have been small, and it has not been able to earn much more than operating expenses.

His Honor, Judge Newman appointed Jephtha H. Rucker receiver of the road on July 28, 1892.

CONDITION OF ROAD.

The financial difficulties of The Richmond and Danville Railroad Company during the last two years have prevented the operating officers from being able to expend the proper amount for new rails, and upon the road-bed and structures, to keep the railroad in the condition in which it should be maintained, and it will be necessary for the receivers, during the summer and autumn, to make a much larger expenditure than they would for ordinary maintenance.

All of which is respectfully submitted.

F. W. HUIDEKOPER,
REUBEN FOSTER,
Receivers.

Washington, D. C., August 8, 1892.

And on another day, to-wit: Aug. 16, 1892, the following order was entered:

ORDER ON PETITION OF CENTRAL TRUST COMPANY.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

William P. Clyde and others	}
<i>v.</i>	
Richmond and Danville R. R. Co.	
and others.	

Comes now the Central Trust Company and files its petition, praying to be allowed to intervene herein, and on its motion, no objection being made, it is ordered that it have leave to intervene in this cause, on the condition that it hereby submits to the several orders heretofore entered herein.

HUGH L. BOND,
Ct. Judge.

Aug't 16, 1892.

And on the same day, to-wit: August 16, 1892, came the Central Trust Company of New York, and presented its petition for the appointment of permanent receivers in this cause, which petition is as follows:

**PETITION OF CENTRAL TRUST COMPANY AND OTHERS,
TRUSTEES, FOR APPOINTMENT OF
PERMANENT RECEIVERS.**

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

William P. Clyde et al	}
<i>vs.</i>	
Richmond and Danville Railroad	
Company et al.	

In Equity.

The undersigned, as representing the several liens on the property designated hereunder, if the court should determine to continue its present judicial possession of the system, hereby respectfully petitions it to appoint Frederic W. Huidekoper and Reuben Foster as permanent receivers of the Richmond and Danville Railroad Company.

CENTRAL TRUST COMPANY OF NEW YORK,
By F. P. OLCOTT, President.

August 10, 1892.

Trustees of

Richmond and Danville Railroad Company,
 Consolidated 6 % Gold Mortgage,
 Debenture 6 % Mortgage,
 Consolidated 5 % Mortgage,
 Equipment 5 % Mortgage,
 Equipment 6 % Mortgage,
 Columbia and Greenville R. R.,
 Piedmont Railroad 1st and 2nd Mortgages,
 Washington, Ohio and Western R. R.,
 North Western North Carolina R. R.,
 Clarkesville and North Carolina R. R.,
 Oxford and Clarkesville R. R.,
 Virginia Midland General Mortgage.
 Western North Carolina R. R.,
 Charlotte, Columbia and Augusta R. R.,
 Spartanburg, Union and Columbia R. R.,
 Georgia Pacific Railway,
 Statesville and Western R. R.,
 North Eastern R. R. of Georgia,
 Asheville and Spartanburg R. R.,
 North Carolina Midland R. R.,
 Yadkin R. R.,

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
 OF VIRGIGIA.

William P. Clyde et al.	}	In Equity.
<i>vs.</i>		
Richmond and Danville Railroad Company et al.		

The undersigned, believing that it will be for the best interests of the property and the respective creditors of the Richmond and Danville Railroad System, respectfully petition the court to continue its judicial possession of all said property, and also to appoint Frederic W. Huidekoper and Reuben Foster as permanent receivers thereof.

August 3d, 1892.

I. WILCOX BROWN,
 Trustee of the Virginia Midland Railway,
 First Mortgage Deed of Trust.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

William P. Clyde et al.
vs.
Richmond and Danville Railroad
Company et al. } In Equity.

The undersigned, believing that it will be for the best interests of the property and the respective creditors of the Richmond and Danville Railroad System, respectfully petition the court to continue its judicial possession of all said property, and also to appoint Frederic W. Huidekoper and Reuben Foster as permanent receivers thereof.

August 3d, 1892.

I. WILCOX BROWN,
CHAS. M. BLACKFORD,
Trustees of Franklin and Pittsylvania Mortgage.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

William P. Clyde et al.
vs.
Richmond and Danville Railroad
Company et al. } In Equity.

The undersigned, believing that it will be for the best interests of the property and the respective creditors of the Richmond and Danville Railroad System, respectfully petition the court to continue its judicial possession of all said property, and also to appoint Frederic W. Huidekoper and Reuben Foster as permanent receivers thereof.

J. B. PACE,
Trustee Oxford and Henderson R. R. 1st Mortgage.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

William P. Clyde et al.
vs.
Richmond and Danville Railroad
Company et al. } In Equity.

The undersigned, believing that it will be for the best interests of the property and respective creditors of the Richmond and Danville Railroad System, respectfully petition the court to continue its judicial possession of all said

property, and also to appoint Frederic W. Huidekoper and Reuben Foster as permanent receivers thereof.

JNO. D. LANGHORN,
JNO. H. FLOOD,

President Lynchburg Female Orphan Asylum,
Holders of Virginia Midland Ry. and other securities.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

William P. Clyde et al.	} In Equity.
<i>vs.</i>	
Richmond and Danville Railroad Company et al.	

The undersigned, believing that it will be for the best interests of the property and the respective creditors of the Richmond and Danville Railroad System, respectfully petition the court to continue its judicial possession of all said property, and also to appoint Frederic W. Huidekoper and Reuben Foster as permanent receivers thereof.

D. SCHENCK,
Trustee O. & H. R. R. Co.

CIRCUIT COURT U. S., EASTERN DIST. OF VA.

W. P. Clyde et al.	} In Equity.
<i>vs.</i>	
Richmond and Danville R. R. Co. et al.	

If the court determines to continue its judicial possession of the property involved in this suit I believe it will be to the interest of the property and creditors to appoint Messrs. F. W. Huidekoper and Reuben Foster as permanent receivers.

August 1, '92.

JNO. J. HEMPLIN,
Trustee Chevard and Chester Mtg.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA..

William P. Clyde et al.	} In Equity.
<i>vs.</i>	
Richmond and Danville Railroad Company et al.	

The undersigned, believing that it will be for the best

interests of the property and the respective creditors of the Richmond and Danville Railroad System, respectfully petition the court to continue its judicial possession of all said property, and also to appoint Frederic W. Huidekoper and Reuben Foster as permanent receivers thereof.

JOS. BRYAN,

As Trustee of the Columbia and Greenville
R. R. Co., Mortgage dated April 1, 1881.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

William P. Clyde et al.

vs.

Richmond and Danville Railroad
Company et al.

} In Equity.

The undersigned, believing that it will be for the best interests of the property and the respective creditors of the Richmond and Danville Railroad System, respectfully petition the court to continue its judicial possession of all said property, and also to appoint Frederic W. Huidekoper and Reuben Foster as permanent receivers thereof.

A. C. HASKELL,

Trustee, &c.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

William P. Clyde et al.

vs.

Richmond and Danville Railroad
Company.

}

The undersigned, believing that it will be for the best interests of the property and the respective creditors of the Richmond and Danville Railroad System, respectfully petition the court to continue its judicial possession of all the property, and also to appoint Frederick W. Huidekoper and Reuben Foster as permanent receivers thereof.

J. H. MADEN,

M. P. PEGRAM,

Trustees of the Mortgage Bonds of the Atlantic,
Tennessee and Ohio Railroad Company.

TELEGRAM.

Richmond and Danville Railroad Company.

F. W. Huidekoper and Reuben Foster, Receivers.

Form —

No. 1 M. Sent by L. Rec'd by Og. Time 9:16 P.
From Raleigh, N. C. Date, Aug. 16, 1892.

To Col. A. B. Andrews,

Richmond, Va. :

I have received this morning the petition from Chester and Lenoir R. R. for appointment of receivers. Where shall I send it?

H. W. MILLER.

\$695,400.

Cent. Trust Co.,	\$59,400,000
Virginia Midland,	7,635,000
Frankl. & Pittsylv.,	85,000
Oxford & Henderson,	195,000
Cheraw & Chester,	155,000
At. Term. & Ohio,	150,000
Col. & Greenville,	1,000,000
C. C. & A.,	3,000,000
Danv. & New river,	1,052,000

\$72,672,000
695,000

Chester & Lenoir,

Eug. Kelly,	\$73,367,000
Sick,	5,500,000

And on the same day, to-wit: the 16th day of August, 1892, the following order was entered:

ORDER APPOINTING PERMANENT RECEIVERS AND DIRECTING AN ACCOUNT OF ALL THE INDEBTEDNESS OF THE DEFENDANT RAILROAD COMPANY TO BE TAKEN.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

William P. Clyde and others }
 against }
 The Richmond and Danville }
 Railroad Company and }
 others. }

Now on this 16th day of August, 1892, there comes

on to be heard the motion for the appointment of permanent receivers in the above entitled cause as set by the original order entered herein on June 15th, 1892, and after hearing the solicitors for complainant, and Mr. Edgar M. Johnson for the defendant railway company, and Mr. James Thompson and Mr. A. H. King in behalf of certain intervening stockholders, the court orders and decrees that Frederic W. Huidekoper, of Meadville, Pa., and Reuben Foster, of Baltimore, Md., at present temporary receivers, be, and they are hereby appointed permanent receivers in this cause, with all and singular the right, powers, titles, duties and obligations set forth in and by their original order of appointment, and the orders supplemental thereto, heretofore entered in this cause.

It is further ordered by the court that, by reason of their skill in accounting, Mr. M. F. Pleasants and Thos. S. Atkins, be, and they are hereby appointed special masters in chancery to hear evidence and take the necessary accounts, and report to the court, with all convenient speed, the amount and nature of all the indebtedness of the said Richmond and Danville Railroad Company, and whether secured by mortgage, pledge or other lien upon any portion of the corporate property; and if so, on what portion, and the names of all creditors holding such demands; and, if possible, their places of residence, but where an issue of bonds secured by mortgage on any part of the corporate property is reported on, it shall be sufficient to include in such report the name or names of the trustee or trustees, and the amount of the bonds outstanding, and the general description of the particular property covered by such mortgage or other lien.

The said special masters to give notice at once by publication three times a week for sixty days in some newspapers of general circulation printed in the cities of New York, N. Y., Baltimore, Md., Washington, D. C., Richmond, Va., Raleigh, N. C., Columbia, S. C., Atlanta, Ga., Birmingham, Ala., and Columbus, Miss., of their appointment as such special masters under the orders of this court, and requiring all parties holding any indebtedness, claims or demands against said Richmond and Danville Railroad Company, except the holders of bonds secured by recorded mortgages on said property or some part thereof, to file their respective claims against said property with the said special masters at their office in Richmond, Va., on or before the 1st day of December, 1892; to the end that the validity, amount and respective priorities upon the property or income thereof may be determined and reported on by the said special masters to the court. And it is

hereby ordered that all creditors holding any such demands against the Richmond and Danville Railroad Company who shall fail or neglect to file their respective demands with the said special masters on or before the said 1st day of December, 1892, may be barred and precluded from asserting any claim, lien or right of payment against the said corporate property in the custody of the court, and shall not be included in any basis or distribution arising from the proceeds of sale or the income therefrom.

And the special masters are hereby directed to insert the substance of this order in the said notice.

HUGH L. BOND,
Ct. Judge.

Altered to three times a week. H. L. B.

And on another day, to-wit : the 19th day of December, 1892, came J. Wilcox Brown and others and presented a petition of certain bondholders, which petition is as follows :

PETITION OF UNDERLYING BONDHOLDERS AND ORDER THEREON.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

William P. Clyde, John C. Maben and William H. Goadby, <i>vs.</i> Richmond and Danville Railroad Company and others.	}	In Equity.
--	---	------------

To the Honorable Judges of the Circuit Court of the United States for the Eastern District of Virginia, Sitting in Equity :

The petition of J. Wilcox Brown, William H. Blackford, Frederick M. Colston, Skipworth Wilmer, John Gill, John A. Whitridge, John B. Ramsay, Frank P. Clark, Richard M. Venable and John M. Nelson, all of the city of Baltimore, State of Maryland, and all citizens of the said State, and James H. Dooley, of the city of Richmond, State of Virginia, and a citizen of said State, and Louis Fitzgerald, of the city of New York, State of New York, and a citizen of said State, respectfully shows :

First. That your petitioners have been chosen by the holders of a large number of the bonds issued by railroad companies, which form a part of what is known and described in the bill of complaint in this case as "The Richmond and Danville Railroad System," to represent them

in any litigation or proceedings, so far as may be necessary to protect their interests, and especially to represent them in the above entitled suit in any litigation or proceedings for the foreclosure of any of the mortgages or trust deeds executed by the said Richmond and Danville Railroad Company, or any of the companies forming a part of said system, and your petitioners file herewith, and as part hereof, marked Exhibit A, a copy of the agreement between said bondholders and your petitioners, by virtue of which your petitioners are empowered so to represent said bondholders; and your petitioners further show that more than a million of said bonds have been deposited with them under said agreement, the same being second mortgage bonds of the Georgia Pacific R. R. Co., second mortgage bonds of the Columbia and Greenville R. R. Co. and mortgage bonds of other of the roads constituting the said Richmond and Danville R. R. System.

Second. That heretofore William P. Clyde, John C. Maben and William H. Goadby, the complainants herein, filed their bill in this court, sworn to on June 15, 1892, praying, among other things, that the court should administer the railroad, assets and property of the defendant, the Richmond and Danville Railroad Company, and would, for such purpose, marshal all its assets, and ascertain the several and respective liens and priorities existing upon each and every part of the said system of railways, and the amount due upon each and every of said mortgages or other liens, and enforce and decree the rights, liens and equities of each and all of the stockholders and creditors of said Richmond and Danville Company, and of the defendant, The Richmond and West Point Terminal Railway and Warehouse Company, and that the same might be finally ascertained and decreed by the court upon the respective interventions or applications of each and every of such creditors or lienors in and to not only said lines of railroad, appurtenances and equipments, but also to and upon each and every portion of the assets and property of each of the said corporations, and also for other and further relief, as by reference to said bill of complaint will more fully and at large appear.

Third. That by an order of this court, made and entered in this suit on the 15th day of June, 1892, Frederick W. Huidekoper and Reuben Foster were appointed receivers of, all and singular, the property and assets of said Danville Company; that said receivers thereupon duly qualified, and on or about the 15th day of June, 1892, entered into possession of all said property.

shall be deposited, and after the expiration of such time, no holder of any of the same, who shall not, within the time so fixed and limited, have deposited his holdings aforesaid, under the provisions of this agreement, shall be entitled to any of the rights and privileges herein provided for, except on such terms and conditions as the said committee may prescribe.

4. The committee may, in anticipation of the reorganization of said system, or any part thereof, prepare a plan of reorganization of the entire system, or of any part thereof, setting forth the details of such reorganization and the securities to be issued and distributed thereunder; and, on the request of a majority in interest of the holders of certificates for defaulted securities of any road in such system, the committee shall prepare a plan for the separate reorganization of such road. And when any separate reorganization of any divisional road or roads shall be so, as aforesaid, determined on or requested, the holders of certificates for a majority in interest of the defaulted securities on such road or roads, shall be entitled to select from said committee a sub-committee of five, to which shall be referred the preparation of the plan for such separate reorganization.

5. Any plan of reorganization prepared as aforesaid shall be filed with said Trust Company, and a copy thereof shall be mailed to each of the holders of certificates who shall appear upon the records of said Trust Company to be entitled to any security or securities issued by or which are a lien on the system or that part of it to be reorganized under said plan, at their several post-office addresses as the same shall appear on the records of said Trust Company, together with a written or printed notice of the time and place of a meeting of the parties so as aforesaid interested in the system or part of it so to be reorganized, to be held for the purpose of taking action upon said plan of reorganization, which time shall not be less than thirty days from the date of mailing said notice. And notice of the time, place and purpose of such meeting shall also be published not less than twice a week for three consecutive weeks prior to said meeting in at least one daily newspaper in the city of New York, in Baltimore and in Richmond, Virginia.

6. At any such meeting the parties holding certificates for securities of the system, or of the part of it to be reorganized under said plan, shall be entitled to vote according to the amount of their several holdings; and if a majority in interest of the holders of certificates for each class of

said securities (if there be more than one class) represented in person or by proxy at said meeting, shall approve said plan of reorganization, or the same as modified by a majority in interest of the holders of certificates for each class of securities present or represented at said meeting, the same shall, thereupon, be declared adopted. All parties holding certificates for securities of the System, or of the part thereof to be reorganized, who may dissent from said plan of reorganization so approved and adopted shall be entitled to a return of such securities as are issued by or are a lien on the System or part thereof to be reorganized under the plan, upon surrender of such certificates, and upon payment of all assessments which shall have been made by the committee on such securities so to be withdrawn, up to the time of the withdrawal; provided, that such dissent be expressed in writing, addressed to said Trust Company, and such return be demanded within twenty days after the approval and adoption of the plan of reorganization, as aforesaid; and any of said holders of such certificates who shall not withdraw their securities and pay the assessments thereon, as aforesaid, shall be deemed to have assented to said plan of reorganization.

7. But in case any plan of reorganization or modification thereof submitted as hereinbefore provided to those interested therein, shall be approved by a majority in interest of the holders of certificates for one or more classes of securities and not approved by a majority in interest of the holders of any other class or classes, and the committee shall be unable to unite the several classes on a plan of reorganization, then, subject to the right of the holders of certificates to withdraw the securities which are issued by or are a lien on the System or part thereof to be reorganized under the plan, as provided in Article 6 hereof, the committee may proceed to carry out the plan approved by one or more of such classes.

8. If it shall appear to the committee that it is necessary or proper to make any modification in any plan of reorganization after it shall have been adopted in the manner above set forth, in order to carry out the purposes of said plan, then the committee shall have power to make such modification; provided, that any modification so made by the committee which changes the amount or character of securities so to be issued or distributed under the plan as adopted, must be made at a meeting of those interested, called and held as provided in Articles 5 and 6 of this agreement.

9. Any plan or modification of a plan made under Articles 4, 5, 6, 7 and 8 shall be as binding on all parties holding certificates for securities of the System, or part thereof, to be reorganized under said plan, to all intents and purposes as if the same had been incorporated in and made a part of this agreement at the time of its execution.

10. When any plan of reorganization shall have been submitted and adopted, with or without modification as aforesaid, as hereinbefore provided, the said committee are hereby authorized and empowered to do all acts and things necessary or proper to carry out said plan, and to that end may exercise any powers, authority or discretion which the holders of the securities deposited hereunder, or any of them, might or could do by virtue of any existing deed of trust, mortgage, contract or agreement relating to the said securities by or with any person or corporation whatsoever, and also may employ and fix the compensation of such agents or attorneys as it may see fit, and delegate to such agents and attorneys such of its powers as it may see fit; it being the intent of the parties of the first part to give to the said committee full and absolute control of the reorganization of said system or any part thereof, under any plan adopted as aforesaid; and all powers requisite, or, in the opinion of the committee, desirable, to accomplish such reorganization, are hereby conferred on it in addition to those specifically herein enumerated; but said committee shall have no power or right to obligate any of the parties hereto for the payment of any sums of money, but the securities deposited shall be liable for any assessments made as hereinafter provided.

11. The holders of certificates hereunder shall be entitled to vote at all meetings herein provided for, either in person or by proxy, upon presentation of said certificates; or they may deposit said certificates with the Trust Company or with such agents as the committee may appoint, and while so deposited may vote on the same, in person or by proxy, without producing them.

12. Said committee shall have power, in order to protect the interests of holders of certificates hereunder, and in order to compel the reorganization of said System or any part thereof, or to carry out any plan of reorganization so as aforesaid adopted, to do any and all acts and to bring or defend, or intervene in, any suit or suits in any court or courts, as fully as any of the parties of the first part might or could.

13. Said committee is hereby authorized to assess the

securities deposited hereunder such sum or sums as it may require for expenses, from time to time, such assessments not to exceed in the aggregate five per cent. of the par value of the securities so deposited, but said committee shall, as far as practicable, provide in any plan of reorganization for the repayment to the holders of certificates, participating in such reorganization, of the amounts assessed and paid on the securities represented by said certificates. All assessments made hereunder shall be a lien on the securities assessed, and may be enforced by said committee on such terms as the committee shall determine. Where the said assessments are made to meet expenses incurred in the reorganization of any part of said System, such assessments shall be only on the securities of such part. Said committee shall justly and equitably apportion any expenses incurred upon the particular class or classes of securities for the benefit of which such expenses may be incurred; and such apportionment shall be final and binding on all parties to this agreement. The members of the committee shall be entitled to a fair compensation for their services.

14. Said committee, and its attorneys and agents, shall assume no responsibility for the execution of the purposes of this agreement, or any part thereof; its members will, however, in good faith endeavor to execute the same

15. Said committee shall have the power to increase its number, and to fill any vacancy or vacancies in said committee occasioned by death, resignation or otherwise. It may act by a majority of its entire number, either at a regular or special meeting convened on notice, or, without a formal meeting, by writing signed by all of said committee.

16. This agreement may be printed and copies thereof may be signed; all of said copies thereof shall be deemed and taken as constituting one original paper. The deposit of securities and the receipt of certificates issued therefor, hereunder, shall have the same effect as if the holder of such certificates had actually signed this agreement.

In witness whereof, the said parties have hereunto set their names or affixed their corporate seals, and the parties of the first part have written opposite, the amount and character of the securities deposited by them.

Name.	|	Address.	|	Amount of Securities.
-------	--	----------	--	-----------------------

The Mercantile Trust Company (of New York) has been designated as an additional depository under this agreement, and all securities deposited with said company will be receipted for by it and held upon the same terms as those deposited with the Mercantile Trust and Deposit Company of Baltimore; and under the power herein contained Louis Fitzgerald has been appointed a member of the committee.

And on another day, to-wit: January 10, 1893, came E. F. Hyde, and, by leave of court, filed his affidavit, which affidavit is in the words and figures following, to-wit:

AFFIDAVIT OF E. F. HYDE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

William P. Clyde and others	} In Equity.
<i>vs.</i>	
The Richmond and Danville Railroad Co. and others.	

UNITED STATES OF AMERICA.	} ss:
Southern District of New York,	
State, City and County of New York,	

E. Francis Hyde, being duly sworn, says: I am an officer, to-wit., the Second Vice-President, of the Central Trust Company of New York. The said Central Trust Company of New York is the trustee of and under divers mortgages or deeds of trust made by the Richmond and Danville Railroad Company and by other companies embraced in what is known as the Richmond and Danville System.

It has heretofore made proof in respect to the said mortgages and the amount of bonds outstanding thereunder, and a copy of the sworn statement filed, made to M. F. Pleasants and Thomas A. Atkins, Special Masters in Chancery, pursuant to the order in this case, is hereunto annexed, marked "A." Deponent further says that the said Central Trust Company of New York did heretofore file its petition in this cause, asking to be made a party thereto, and that by an order made and entered on August 16, 1892, it was allowed to intervene in this cause as prayed, and deponent further says that the said Central Trust Company of New York has no interest adverse to the

interest of the holders of the several securities represented by it, and that it has not done any act or thing in any manner tending to impair any of the rights and interests of said security holders.

E. FRANCIS HYDE.

Subscribed and sworn to before me this 9th day of February, 1893.

{ Notarial
Seal. }

H'Y H. WHITMAN,
Notary Public N. Y. Co.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

(At Richmond.)

William P. Clyde and others }
 vs. }
The Richmond and Danville } In Equity.
Railroad Company and }
others. }

STATEMENT OF CENTRAL TRUST COMPANY OF NEW YORK

Made to M. F. Pleasants and Thomas A. Atkins, Special Masters in Chancery, Pursuant to an Order Entered in the Above Entitled Cause on the 16th Day of August, 1892.

UNITED STATES OF AMERICA. }
Southern District of New York, } *ss.*
State, City and County of New York, }

E. Francis Hyde, being duly sworn, says: I am an officer, to-wit., Second Vice-President of the Central Trust Company of New York. Said Central Trust Company of New York is the trustee of a number of mortgages or deeds of trust made by said Richmond and Danville Railroad Company, or any other railroad companies embraced in what is known as the Richmond and Danville System. I annex to this affidavit and make a part thereof a statement of such mortgages or deeds of trust, which statement is marked Schedule A. Said schedule contains the name of the mortgagor in each mortgage, a brief description of the bonds secured by each mortgage, the date of each mortgage, and the amount of bonds outstanding under each mortgage. Said statement, Schedule A, is made from the books and records of said Central Trust Company of New York, and is true, to the best of my knowledge, information and belief.

The interests of said Central Trust Company of New York in the many properties included in what is known as the Richmond and Danville System are so numerous and varied, and the time within which to prepare this statement is so short (since notice to present this statement of claim was received by said Central Trust Company but two days ago), that there may be errors and omissions in this statement now presented. Said Central Trust Company, therefore, prays leave to add to, alter or amend this statement of claim hereafter if it shall desire so to do.

E. FRANCIS HYDE.

Subscribed and sworn to before me this 30th day of November, 1892.

{ Seal. }

•
GEORGE CROMWELL,
Notary Public Richmond County.

Certificate filed in N. Y. Co.

SCHEDULE A.

NAME OF MORTGAGOR.	Description of Bonds Secured.	Date of Mortgage.	Amount of Bonds.
Richmond & Danville R. R. Co.	Consolidated 6 per cent. Due 1915.	Oct. 5, 1874.	\$5,997,000
do.	Debenture 6 per cent. Due 1927.	Feb. 1, 1882.	4,000,000
do.	Consolidated 5 per cent. Due 1936.	Oct. 22, 1886.	4,527,000
do.	Equipment 5 per cent. Due 1909.	Sept. 3, 1889.	1,582,000
do.	Equipment 6 per cent. Due 1906.	May 1, 1891.	909,000
Piedmont R. R. Co.	First 6 per cent. Due 1928.	June 20, 1888.	500,000
do.	Second 6 per cent. Due 1928.	June 20, 1888.	500,000
Washington, Ohio & Western R. R. Co.	First 6 per cent. Due 1924.	May 28, 1884.	246,000
North Western North Carolina R. R. Co.	First 6 per cent. Due 1938.	Apr. 2, 1888.	1,471,000
Clarksville & North Carolina R. R. Co.	First 6 per cent. Due 1937.	Nov. 1, 1887.	111,000
Oxford & Clarksville R. R. Co.	First 6 per cent. Due 1937.	Nov. 1, 1887.	744,000
Virginia Midland R'y Co.	General 5 per cent. Due 1936.	Apr. 15, 1886.	4,859,000
Western North Carolina R. R. Co.	1st Consol. 6 per cent. Due 1914.	Sept. 1, 1884.	3,856,000
Charlotte, Columbia & Augusta R. R. Co.	1st Consol. 6 per cent. Due 1933.	Nov. 7, 1883.	500,000
Columbia & Greenville R. R. Co.	First 6 per cent. Due 1916.	Jan. 1, 1881.	2,000,000
Spartanburg, Union & Columbia R. R. Co.	First 5 per cent. Due 1932.	June 7, 1882.	1,000,000
Georgia Pacific R'y Co.	First 6 per cent. Due 1922.	May 6, 1882.	5,662,000
do.	Consol. 2d 5 per cent. Due 1923.	May 1, 1888.	4,998,500
do.	Mtge. Income. Due 1923.	May 1, 1888.	4,997,500
do.	Sk. Fd. Equip. 5 per cent. Due 1904.	July 17, 1889.	1,406,000
do.	Sk. Fd. Equip. 6 per cent. Due 1906.	May 1, 1891.	546,000
North Eastern R. R. Co. of Georgia.	General 6 per cent. Due 1926.	Nov. 1, 1881.	315,000
High Point, Randleman, Ashboro & Southern R. R. Co.	First 6 per cent. Due 1930.	Apr. 16, 1889.	402,000
Asheville & Spartanburg R. R. Co.	First 6 per cent. Due 1925.	Apr. 1, 1885.	500,000
North Carolina Midland R. R. Co.	First 6 per cent. Due 1931.	Apr. 28, 1891.	390,000
Yadkin R. R. Co.	First 6 per cent. Due 1930.	Nov. 7, 1890.	615,000
East Tennessee, Virginia & Georgia R'y Co. and Richmond & Danville R. R. Co.	Cincinnati Extension 5 per cent. Due 1940.	Feb. 1, 1890.	6,000,000

And on another day, to-wit: March 9, 1893, an order was entered, which order, with the notice and petition thereto attached, is as follows:

NOTICE OF FILING OF PETITION OF RECEIVERS.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

William P. Clyde and others	}	In Equity.
<i>vs.</i>		
Richmond & Danville Railroad Com- pany and others.		

Please take notice, that on the ninth day of March, 1893, at ten o'clock A. M., or as soon thereafter as counsel can be heard, we shall, upon the report and petition, a copy of which is herewith served upon you, and upon all the papers and proceedings herein, apply to the judge of said court sitting in chambers in the city of Baltimore for the allowance of an order in the above entitled cause, in accordance with the prayer of said report and petition, or for such other or further order as to the court may seem just in the premises.

F. W. HUIDEKOPER,
REUBEN FOSTER,
Receivers.

HUGH L. BOND, JR.,
Gen'l Counsel for Receivers.

To

Henry Crawford, Esq., Solicitor for Complainants,
The Richmond & Danville Railroad Co.,
Butler, Stillman & Hubbard,
Solicitors for Central Trust Co. of New York.

Service of copy above order and within report and petition admitted and further notice waived.

BUTLER, STILLMAN & HUBBARD,
Solrs. for Central Trust Co.

HENRY CRAWFORD,
Solicitor for Complainants.

**PETITION OF RECEIVERS FOR LEAVE TO PURCHASE FOUR
LOCOMOTIVES.**

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA, IN EQUITY.

William P. Clyde and others	} In Equity.
<i>vs.</i>	
Richmond and Danville Railroad Company, and others.	

Frederic W. Huidekoper and Reuben Foster, receivers, respectfully report to the court that for the proper and economical operation of the lines of railroad of which they are the receivers, and the due conduct of the business of a common carrier thereon, as provided by the original order of their appointment, four new and powerful passenger locomotives are required. On ascertaining the need of such locomotives, your receivers arranged with Burnham, Williams & Co., proprietors of the Baldwin Locomotive Works, of the city of Philadelphia, for the building of the same, at the cost of ten thousand nine hundred dollars each, payable either in cash on delivery, or \$4,360 in cash and the balance with interest at six per centum per annum, in twelve quarterly payments of \$3,590.46 each, as the court might approve, the deferred payments to be evidenced by the promissory notes or certificates of your receivers. The four locomotives are now completed and ready for use, and were delivered to your receivers February 3rd, 1893. Your receivers further report that the payment in cash of the full amount of the purchase price of said locomotives will embarrass them in the administration of their trust, especially in carrying out the orders of the court as to the maintenance of the system of railroads in their charge as a whole, while the locomotives in service will pay for themselves by instalments.

Your receivers, therefore, wish, with the approval of the court, to exercise their option to pay \$4,360 of the price of said locomotives in cash and the balance in instalments, as above stated. Wherefore your receivers pray that the court approve their action in the premises and authorize them to execute a contract with said Burnham, Williams & Co. for the purchase of said locomotives at the price of \$43,600, of which \$4,360 shall be paid in cash and the balance, with interest, in quarterly instalments of \$3,590.46 each, the title to remain in said firm until the last instalment is paid, and to issue to said firm your receivers'

twelve promissory notes or certificates for the respective deferred payments, all dated February 3rd, 1993.

F. W. HUIDEKOPER,
REUBEN FOSTER,
Receivers.

HUGH L. BOND, JR.,
Gen'l Counsel for Receivers.

UNITED STATES OF AMERICA } ss:
District of Columbia, }

F. W. Huidekoper, being duly sworn, says that he is one of the receivers named in the foregoing report, and that the matters and things therein stated are true.

F. W. HUIDEKOPER.

Subscribed and sworn to before me this eighth day of March, 1893.

{ Notarial
Seal. }

CHAS. P. LEE,
Notary Public.

ORDER ON FOREGOING PETITION.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

William P. Clyde and others }
 ss. }
Richmond & Danville Railroad } In Equity.
Company and others. }

Come now Frederic W. Huidekoper and Reuben Foster, receivers heretofore appointed in this cause, and file their report in writing, advising the court of the arrangement made by them with Burnham, Williams & Co., proprietors of the Baldwin Locomotive Works, for the building of four passenger locomotives and the purchase of the same by said receivers for the operation of the properties in this cause.

On consideration whereof it is ordered by the court that the action of the receivers in procuring the building and arranging for the purchase of said locomotives is hereby approved, and the receivers are hereby authorized to execute a contract with said firm for the purchase of said locomotives for the price of \$43,600, paying \$4,360 in cash and

the balance, with interest, in twelve quarterly instalments of \$3,590.46 each, the title to remain in said firm till the last instalment is paid, and to issue their twelve receivers' certificates or notes for said deferred payments, all bearing date February 3rd, 1893.

Nov. 9, 1893.

N. GOFF,
Circuit Judge.

And on another day, to-wit: the 20th day of March, 1893, came the complainants and presented a notice and petition, which, with the order entered thereon, are as follows:

**NOTICE OF FILING OF PETITION OF COMPLAINANTS AS
TO OFFICE BUILDING.**

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

William P. Clyde and others }
 vs. }
The Richmond & Danville Railroad }
Company and others. }

To the Central Trust Company of New York, or Butler,
Stillman & Hubbard, its solicitors:

Please take notice that at ten o'clock A. M. Monday, March 20th, at the United States Circuit Court-Room in the City of Baltimore, Maryland, the plaintiffs will present a petition of which the annexed is a copy and ask the court to enter order thereon, in accordance with the prayer.

HENRY CRAWFORD,
Solicitor for Complainants.

March 17, 1893.

Service accepted.

BUTLER, STILLMAN & HUBBARD,
for CENTRAL TRUST CO.
RICHMOND & DANVILLE R. R. CO.,
By JOHN A. RUTHERFURD,
3rd V. President.

PETITION OF COMPLAINANTS AS TO OFFICE BUILDING.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

William P. Clyde and others }
 vs. }
Richmond & Danville Railroad Company and others. }

To the Honorable Judges of said Court :

Your petitioners, William P. Clyde, John C. Maben and William H. Goadby, original complainants in this cause, represent to the court that, on October 5, 1874, the said Richmond & Danville Railroad Company duly signed, sealed, executed and delivered to Isaac Davenport, Jr., and George B. Roberts, as trustees, a deed of trust or mortgage to secure an issue of bonds of the said Railroad Company, and thereby mortgage and convey to said trustees all and singular the line of railroad, equipment, appurtenances and franchises of said Richmond & Danville Railroad Company. A copy of said trust deed is filed herewith and made part of this petition.

Thereafter, by a deed of substitution, the said Isaac Davenport, Jr., and George B. Roberts duly resigned their trust under said conveyance, and the said Richmond & Danville Railroad Company, in accordance with the terms of said instrument, duly appointed the Central Trust Company of New York as substituted trustee, and the said last named corporation has ever since been and now is the trustee of the trust estate with the duties and powers specified in the said Richmond & Danville trust deed of October 5, 1874.

In and by the fourth paragraph of said trust deed which was substituted so that said Richmond & Danville Railroad Company, with the written consent of the said trustees, might sell for cash or on credit or exchange any part of the real estate and appurtenances conveyed by said trust deed, not required for the continued and proper use of the Richmond & Danville Railroad Company, free and clear of the lien of said mortgage,

Provided, that the proceeds of any such sale should, at the option of the Railroad Company, be invested by it either in improvements of the remaining part of the estate or the purchase by it of other property, real or personal; which property so purchased should, upon the demands of the trustee, be conveyed in trust by the said Railroad Company as additional security for the bonds described in such

indenture and subject to all the trusts and power of sale contained in such trust deed herewith exhibited.

In pursuance of the authority reserved in said trust deed the said Richmond & Danville Railroad Company, on or about August 2, 1890, sold its certain office building in the city of Richmond, Virginia, which was not then required for the proper use and operation of the railroad, and received therefor the sum of \$25,000, which has been turned over to the said Central Trust Company as trustee in said instrument, and now holds the said funds.

Your petitioners show that the main office of the said Richmond & Danville Railroad Company and the business office used by the said receivers of this court in conducting the operations of said property, situate in the city of Washington, in the District of Columbia, consists of a main brick building and a brick annex thereto; that the cost of the land and present existing improvements thereon has been \$157,000, and that the property is subject to \$75,000 of a purchase money mortgage.

Your petitioners are advised that the office building as it at present exists is inadequate for the accommodation of the officers and employees which the receivers are compelled to use in the proper conduct of the business of their trust; that for certain of the clerical departments they have been compelled to lease two floors of a building across Pennsylvania avenue and nearly one-eighth of a mile from the main office, which arrangement is expensive and unsatisfactory, as the entire clerical force of the officers ought not, in justice to the services, be separated.

Your petitioners are advised and believe that the best interest of the trust estate, and the economical management of the clerical force in the employ of the receivers, require that the present annex of the main office building should be built up to the full height of the main building; and also, as the said office building contains no proper vaults for the storage and preservation of the important papers of the receivership, and also that divers vaults should be constructed if such new improvements are made for the safe custody of their important papers.

To complete such improvements will require an outlay of \$27,000, and such structure when completed will fully accommodate all the requirements of the receivership and enable the officers of the court to abandon the lease property, which at present they are forced to occupy, and also concentrate their working force under one roof.

Your petitioners further show that when proposed addition is completed the real estate and total improvement will represent an actual cash cost of \$184,000, and is, as

they are advised, fairly worth in the market considerable above that sum (viz. : about \$225,000), the only lien thereupon being the \$75,000 of purchase money mortgage aforesaid.

Your petitioners are further advised it will be for the best interest of the trust estate, and will fully and adequately protect the beneficiaries under the trust deed to said Trust Company, for the court to order the petitioners to complete the above described improvement to the general office building, and to receive and devote exclusively to that purpose the \$25,000 cash in the hands of the Central Trust Company under the indenture of October 5, 1874, and under the provisions of the fourth paragraph of said trust deed to execute and deliver in connection with the Richmond & Danville Railroad Company a proper trust deed conveying to said Central Trust Company an equity of redemption to the said office building, and the real estate on which it is situate, for the benefit of the first mortgage bondholders secured by said trust deed.

The premises considered, your petitioners therefore pray :

First. That the court will enter an order authorizing the receivers to proceed and complete the office building in Washington, D. C., as herein proposed.

Second : That the Central Trust Company be instructed to deliver to the said receivers, to enable them to complete such structure, the \$25,000 now in its hands, as aforesaid, and that thereupon the said Richmond & Danville Railroad Company and the said receivers shall execute a proper deed of trust conveying the said office building, and the real estate on which it is situated, in Washington, D. C., to the Central Trust Company, to have and hold the same as security for the protection of the holders of the bonds issued under the deed of trust of October 5, 1874, and for such other relief as to the court may seem proper.

WM. P. CLYDE,

J. C. MABEN,

WM. H. GOADBY.

By J. C. MABEN.

ORDER ON FOREGOING PETITION.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

William P. Clyde and others
vs.
Richmond and Danville R. R. Co.
and others.

Now on this 20th day of March, A. D. 1893, come the complainants and file their petition herein, praying for an order of court thereon, instructing the receivers to complete the office building now occupied by them in Washington, D. C., and thereupon come also the receivers, by their counsel, the Central Trust Company of New York, by its solicitor, and also the Richmond & Danville Railroad Company, and on consideration of the said petition and no cause being shown against the granting of the prayer thereon.

It is ordered and decreed by the court that the receivers, Frederick W. Huidekoper and Reuben Foster, heretofore appointed in this cause, be and they are hereby instructed in accordance with said petition, to construct and complete the annex to the general office building occupied by them in the City of Washington, D. C., in accordance with the plans and specifications of their engineer, including in such new construction adequate vaults for the preservation and protection of the important vouchers and papers of said corporation and their receivership.

It is further ordered that the Central Trust Company, as trustee, under the mortgage or trust deed, dated October 5th, 1874, referred to in such petition, do, upon demand of the said receivers, pay over the \$25,000 of trust moneys in its hands as stated in such petition to be used by the said receivers in connection with the general office of said receivership sufficient for the purpose, in addition to said \$25,000, and to complete and construct the additions of said office building and as security for the payment by said Central Trust Company to said receivers. The receivers are hereby authorized and instructed to execute and deliver to said Central Trust Company, by way of further assurance and additional security to the said trust deed or mortgage dated October 5, 1874, and subject to the trusts and conditions of said instrument a good and sufficient trust deed, in which the said Richmond & Danville Railroad Company shall also join, conveying to said Central Trust Company the said general office building in Washington, D. C., together with the real estate on which

it is situate as and for the further security of all the bonds issued and outstanding under such afore-mentioned trust deed.

Mar. 20, '93.

N. GOFF,
Circuit Judge.

And on another day, to-wit: June 24th, 1893, came Moore & Schley, and presented their notice and petition, which, with the order entered thereon, are as follows:

NOTICE OF FILING OF PETITION OF MOORE & SCHLEY.

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF VIRGINIA.

Wm. P. Clyde and others	}
<i>vs.</i>	
Richmond and Danville Railroad Company and others.	

Please take notice that at 10 o'clock A. M., June 24th, 1893, the undersigned will present to the Hon. Nathan Goff, at Chambers at Baltimore, Md., their petition in the above entitled cause, a copy of which is herewith served upon you, and pray for the entry of an order thereon.

MOORE & SCHLEY,
Petitioners.

Service admitted.

BUTLER, STILLMAN & HUBBARD,
Sol'rs C. T. Co.

RICHMOND & DANVILLE R. R. CO.,
By W. G. OAKMAN, Pres't.

PETITION OF MOORE & SCHLEY.

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF VIRGINIA.

William P. Clyde and others	}	In Equity.
<i>vs.</i>		
Richmond and Danville Railroad Company and others.		

To the Hon. Judges of said Court:

The petition of Moore & Schley, in behalf of themselves and all other holders of the emergency loan hereafter recited, respectfully show to the court as follows:

Prior to the appointment of receivers herein, to-wit: on March 29, 1892, the said Richmond and Danville Railroad Company was operating a large system of railways in six States and was constantly incurring heavy expenses on pay-roll and supply account in order to keep such roads in continuous operation.

Prior to such date, in consequence of greatly decreased traffic and income therefrom, the said corporation became financially embarrassed, and was unable, out of its reduced earnings, to meet its actual operating and maintenance expenses, taxes and the interest and rentals obligatory upon it on its owned and controlled roads.

It had therefore borrowed over \$4,000,000 from divers banks and banking firms, and had pledged therefor not only all available stocks and bonds owned by it, but it had also borrowed from the Richmond and West Point Terminal Railway and Warehouse Company several millions of securities belonging to the last-named corporation and pledged them for the repayment of such bank loans.

It was represented to the petitioners and their associates that the financial affairs of said Railroad Company were in a critical condition, being without any bankable collateral on which to effect a loan and being in want of a large sum of money to prevent a default in the payment of its labor rolls and vouchers for operating supplies and traffic balances to other roads.

That its earnings had been used to pay the coupons on bonded obligations to such an extent that its current operating expenses had been allowed to fall into such arrear that the employees were becoming disaffected, its supply creditors were pressing for payment and connecting roads were withholding usual traffic exchanges, so that the earnings were being reduced.

It was also represented that the earnings of the system would be, without doubt, greatly increased in the summer and fall, and would then be amply sufficient to repay a loan of \$1,000,000, which was then asked in order to relieve the pressing embarrassment of the corporation and enable it thereby to continue its road as a going concern by paying its overdue operating expenses.

The said corporation requested the petitioners and others to make up a subscription agreeing to temporarily advance it a sum of money, as required, not exceeding \$1,000,000, to be repaid within sixty days, with interest and commission, and to be secured by a pledge of the current income and earnings of the railroad, sixty per cent. of which amount was to be advanced immediately and the the balance as called for within sixty days.

For convenience sake, it was arranged that the money was to be paid over through common agency of the Richmond and West Point Terminal Railway and Warehouse Company, and the said Railroad Company bound itself, from time to time, to pay into a designated depository all of the net earnings of its system not required for maintenance and operation of its railroads and interest and other fixed charges, which were to be applied in liquidation of such loan.

Thereupon, without other security than the agreed pledge and equitable assignment of and charge upon such income, the petitioners and associates signed a subscription binding themselves to make such advances, a copy of which, together with the names of the subscribers and the amounts by them agreed to be advanced, is herewith attached and made part hereof.

The said Railroad Company also executed and delivered a preliminary and informal contract, evidencing the said advances and binding itself to pay over, as aforesaid, its net income, from time to time, to be credited on such advances, interest and commission and reasonable expenses and commissions for enforcing the said claim if the same should not be paid. A copy of which contract is herewith filed and made part hereof.

The petitioners and their associate subscribers, thereupon relying upon the said arrangement, advanced and paid over to the said Railroad Company sixty per cent. of such subscription, being a total of \$567,000, and the said moneys were thereupon used by the said company to relieve its then urgent financial necessities and pay and discharge its operating debts due for labor, supplies and balances due connecting roads, and by means of such advances, and not otherwise, was enabled to maintain the said railroad as a going concern and continue to perform its duties as a public carrier.

None of such advances or interest have ever been repaid to your petitioners or their co-subscribers, and the said Railroad Company, prior to the appointment of receivers, never paid over any of its earnings on account of such loan.

Petitioners respectfully show that their debt was intended to be of the highest dignity and priority, and, under the circumstances aforesaid, they might well be treated in equity as the beneficial assignees of the said operating debts which were discharged out of their moneys and be fully subrogated to the preferential rights of payment out of the current income of the property coming into the receiver's hand, but that they are content with accepting an inferior lien and equity for their emergency loan, without dis-

placing the subsisting mortgages or equitable liens of any of the parties interested in the said property.

Hitherto the net earnings of the Richmond and Danville coming into the receivers' hands have been more than sufficient to pay the operating and maintenance expenses and interest resting on its own road, and, in addition, all of such advances made by petitioners and their associates, but in the interest of its system of railroads, and in order to preserve the integrity thereof against dismemberment, such lien creditors have refrained from insisting on the specific pledge and assignment of income made to them and allowed the said earnings to be used in the maintenance, improvement, operation and interest payments of divers roads in the system which were non-remunerative and a drain on the earnings of the Richmond and Danville proper.

The principal sums due to those making such advances is fully set forth in the exhibits hereto attached.

In order to properly evidence and protect the equitable rights of petitioners and other loan creditors against the property of the said Railroad Company and its income during the administration thereof by this court and upon the corpus of said property if sold, the petitioners, in behalf of themselves and all others making such advances, pray that the court will enter an order authorizing and requiring the receivers to issue and deliver to the said class of creditors certificates, in usual form, for the principal of such advances and interest, commissions and reasonable expenses, as contracted for, payable in two years (or sooner, at the option of the court), together with interest on the face of such certificates at the rate of six per cent. per annum until paid, with the express recital in such certificates that they rank as a lien upon the Richmond and Danville Railroad and property, subject in every respect to the former issue of certificates ordered by this court, and also to all the present outstanding mortgage liens against any of the property of the said Railroad Company and for all further relief necessary or proper to protect their equitable rights and liens in the premises.

MOORE & SCHLEY,
Petitioners.

STATE, COUNTY AND CITY OF NEW YORK :

E. R. Chapman, on oath, says he is a member of the firm of Moore and Schley ; that he has read the foregoing petition, and that the matters therein stated are true.

E. R. CHAPMAN.

Subscribed and sworn to before me this June 17, 1893.

Witness my hand and official seal.

{ Seal. }

JAMES J. MURPHY,
Notary Public Kings Co.,
Cert. filed in N. Y. Co.

STATE, CITY AND COUNTY OF NEW YORK } ss :

John A. Rutherford, on oath, says that he is now and has been since January 1st, 1892, Vice-President of the Richmond and Danville Railroad Company; that he has read the above and foregoing petition of Moore & Schley, and personally knows that the matters therein set forth are true, and that the said petitioners and their associates paid over and advanced to the Richmond and Danville Railroad Company the sum of five hundred and sixty-seven thousand dollars (\$567,000) in March, 1892, and that the said amount of money was received by the said Railroad Company and disbursed for the uses and purposes in the said petition stated.

JOHN A. RUTHERFURD.

Subscribed and sworn to before me this 22d day of June, 1893.

Witness my hand and official seal.

{ Seal. }

JAMES J. MURPHY,
Notary Public Kings County,
Cert. filed in N. Y. Co.

This agreement, made and entered into this twenty-ninth day of March, 1892, by and between the Central Trust Company of New York, party of the first part, the Richmond and West Point Terminal Railway and Warehouse Company, a corporation of Virginia, party of the second part, and the Richmond and Danville Railroad Company, a corporation of Virginia, party of the third part, Witnesseth :

First. That the party of the second part has agreed to lend and advance to the party of the third part such sum as it, the party of the third part, shall desire during the next sixty days, in such installments as the party of the third part may desire it, such advances not to exceed in the aggregate the sum of one million dollars.

Second. And whereas a subscription has been made toward a fund of one million dollars to be lent and ad.

vanced to the party of the second part for the purpose of enabling it to make its contemplated advances to the party of the third part, by certain subscribers who have agreed to pay to the party of the first part certain sums of money, not exceeding in all one million dollars, sixty per cent. of which amount subscribed is to be paid into the said Central Trust Company on the 30th day of March, 1892, and the remaining forty per cent. thereof, or as much thereof as the party of the second part shall require, to be paid, from time to time, within sixty days from the date hereof, which subscription is hereto annexed and made part of this agreement.

And whereas the party of the third part has duly made its certain promissory note, dated on the day of the date hereof, for the sum of one million dollars, with interest at the rate of six per cent. per annum, payable sixty days after the date thereof at the Central Trust Company of New York, for value received, and has delivered the same to the party of the second part, which has in turn endorsed the same, and deposited the same so endorsed with the party of the first part, as evidence of and security for the payment of the advances which are contemplated to be made to it, the party of the second part, and to be in turn advanced by it to the party of the third part;

Now, therefore, it is hereby agreed by and between the parties hereto that the party of the first part will pay to the party of the second part such sums of money as it, the party of the first part, shall receive from the said subscribers upon the demand of the party of the second part, to be advanced by it, the party of the second part, to the party of the third part, as above provided.

Third. The party of the third part agrees to pay to the Central Trust Company, from time to time, all its net earnings not required for maintenance and operation of its railroad and for payment of interest on its securities and other fixed charges, such payments to be credited when made on the said promissory note.

Fourth. The party of the first part agrees to distribute proportionately among the holders of the certificates hereinafter mentioned, the amount so to be received by it from the party of the third part in reduction of the amount which will be due from time to time to said subscribers or their assigns until each subscriber or his assigns shall have been repaid the amount of each respective subscription, with interest plus a commission one per cent.

Fifth. If such repayment shall not have been duly made when the said promissory note shall mature, the party of the first part will, if properly indemnified by said subscribers, enforce the payment of the balance due upon said note, together with interest and commission, and together with its own reasonable commission and expenses, from the parties of the second and third parts as endorser and maker of said note.

Sixth. The party of the first part shall issue its negotiable certificates to said subscribers for the sum or sums paid by them, respectively, from time to time, in the form of which a sample is hereto annexed.

In witness whereof the parties hereto have affixed their respective corporate seals and caused their respective corporate names to be subscribed by their respective Presidents the day and year first above written.

CENTRAL TRUST COMPANY
OF NEW YORK,

By G. SHERMAN, Vice-President.

Attest :

C. H. P. BABCOCK, Secretary.

[L. s.]

RICHMOND & WEST POINT TERMIAL
RAILWAY & WAREHOUSE COMPANY,

By W. G. OAKMAN, President.

Attest :

A. J. RAUGH, Ass't Secretary.

[L. s.]

RICHMOND & DANVILLE
RAILROAD CO.,

By W. G. OAKMAN, President.

Attest :

A. J. RAUGH, Ass't Secretary.

[L. s.]

No. 98.

SYNDICATE LOAN.

\$

\$1,000,000.

Secured by a promissory note made by the
Richmond and Danville Railroad Company,
and endorsed by the

Richmond and West Point Terminal Railway and Ware-
house Company,

Under an agreement between the said companies and the
Central Trust Company of New York, dated March
29th, 1892, and filed with the said Central
Trust Company of New York.

This is to certify that _____ has subscribed
to the above syndicate to the amount of \$ _____ dollars, pay-
ments on the account of which subscription are to be en-
dorsed hereon, the amounts to be paid on account of the
said subscription to be disposed of and repaid to the said
subscriber or _____ assigns at the time and according to
the terms of the agreement above referred to.

CENTRAL TRUST COMPANY OF
NEW YORK, Depository.

By

Vice-President.

Secretary.

New York,

1892.

ENDORSEMENT ON CERTIFICATE.

Received on account of the within subscription as fol-
lows:

March 29th, 1892, \$

§
§
§
§
§
§

For value received, _____ hereby sell, assign and set
over to _____ all _____ right, title and interest
in the within certificate, subject to the terms and condi-
tions of the subscription agreement therein referred to.

Dated New York,

189

Witness,

Referring to an agreement made and entered into this twenty-ninth day of March, 1892, between the Central Trust Company of New York, party of the first part, the Richmond & West Point Terminal Railway & Warehouse Company of Virginia, party of the second part, and the Richmond & Danville Railroad Company of Virginia, party of the third part, a copy of which agreement is hereto annexed and made part of this agreement :

The undersigned severally and respectively, and not one for the other, hereby subscribe and agree to pay the sums set opposite their respective names hereunder to the Central Trust Company, as follows :

Sixty per cent. of such subscription is to be paid on the 30th day of March, 1892, the residue, to-wit : forty per cent. is to be paid in installments or as a whole on the demand of the Central Trust Company at any time, or, from time to time, within sixty days from the date hereof, to be applied by the said Trust Company as provided in the said agreement.

In return for such payments, as an evidence thereof, the Central Trust Company is to issue its negotiable certificates to each of us, the subscribers, or our respective assigns, for the sum or sums to be paid to it from time to time, said certificates to be payable with interest at the rate of six per cent per annum, with one per cent. commission, but only at the times and upon the terms prescribed in the said agreement.

Dated New York, March twenty-ninth, 1892.

Name.	Amount.
William P. Clyde,	\$50,000
Walter G. Oakman,	20,000
Moore & Schley,	50,000
H. C. Fahnestock, V. P.,	150,000
Samuel Thomas,	100,000
William E. Strong,	50,000
George F. Stone,	50,000
J. C. Maben,	25,000
W. H. Goadby & Co.,	25,000
John H. Inman,	100,000
G. Sherman, V. P.,	40,000
Work, Strong & Co., for Lee, Higginson & Co.,	50,000
Hallgarten & Co.,	40,000
J. Kennedy Tod & Co.,	40,000
O. H. Payne,	40,000
Joseph Bryan,	25,000
George S. Scott,	50,000
G. Sherman, for Bank of America,	40,000

SCHEDULE OF PAYMENTS.

William P. Clyde,	\$30,000
W. G. Oakman,	12,000
Moore & Schley,	30,000
H. C. Fahnestock,	90,000
Samuel Thomas,	60,000
William E. Strong,	30,000
George F. Stone,	30,000
J. C. Maben,	15,000
W. H. Goadby & Co.,	15,000
John H. Inman,	60,000
G. Sherman, V. P.,	24,000
G. Sherman, Bank of America,	24,000
Work, Strong & Co., for Lee, Higginson & Co.,	30,000
Hallgarten & Co.,	24,000
J. Kennedy Tod & Co.,	24,000
O. H. Payne,	24,000
George S. Scott,	30,000
Joseph Bryan,	15,000
	<hr/>
	\$567,000

ORDER ON PETITION OF MOORE & SCHLEY.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

William P. Clyde and others	}
<i>vs.</i>	
Richmond and Danville Railroad Company and others.	

In the matter of the petition of Moore & Schley.

Now, on this 24th day of June, 1893, the matter of the said petition coming on to be heard, the complainants and petitioners, the Central Trust Company of New York and the Receivers, appearing thereto by their respective solicitors, and it appearing that notice of this application has also been duly served upon the Richmond and Danville Railroad Company and the Richmond and West Point Terminal Railway and Warehouse Company, and it appearing from the verified allegations of said petition that the matters therein stated are true, and that the several sums of money stated in such petition, amounting in the aggregate to \$567,000, were advanced in good faith by the several creditors named in the schedule thereto attached for the particular uses and purposes in such petition stated, with an agreement to repay the same out of the cur-

rent income of such railroad, and that such class of emergency loan creditors are entitled to the relief prayed herein, and no cause being shown against such application, it is therefore ordered and decreed by the court as follows:

1. That the receivers heretofore appointed in this cause be and they are hereby fully authorized and instructed, on the terms and conditions hereinafter stated, to issue and deliver to the petitioners, Moore & Schley, and to each of the other holders of the emergency loan, as designated in the schedule attached to the petition herein, a receivers' certificate in proper form, dated July 1st, 1893, for the original amount advanced by each of such creditors toward such emergency loan amounting in the aggregate to \$567,000, and interest thereon at six per cent. from the date of such advance to July 1st, 1893, and commission thereon as covenanted in the agreement creating such emergency loan.

The said certificates shall be payable on July 1st, 1895, or before that date, at the option of the court to be declared by its order, at such bank or agency in the city of New York as may be expressed in such certificate, and shall bear interest at the rate of six per cent. per annum from date until paid.

2. The emergency loan indebtedness evidenced by the receivers' certificates issued under this order is hereby constituted and decreed to be, and so continue until fully paid and satisfied, a lien and charge upon all and singular the Richmond & Danville Railroad and its appurtenances, equipment, tools, machinery, supplies and franchises, and also all its leasehold estates, operating contracts, rights in, to and upon all the other railroads which are held, operated or controlled by it, being the entire railroad property now held and managed by the receivers in this cause as the Richmond & Danville System, and upon all the future income and earnings of the said entire system, subject in all things however to the prior lien of receivers certificates issued under the order of this court, entered herein on

and subject also to the prior lien of all the existing mortgage liens on the said railroad property or any part thereof, and such indebtedness and the receivers' certificates evidencing the same shall be entitled, out of such earnings or the proceeds of any sale under foreclosure decree, to priority of payment next after the full satisfaction of all sums due on any foreclosed mortgaged lien.

To persons and corporations advancing any part of the loan hereby authorized, the said receivers shall sign, execute and deliver a certificate in proper form, expressing

the amount so adjudged to be due as aforesaid to the payee thereof, which certificate shall bear a serial number.

The receivers shall preserve a proper record showing the serial number, payee and amount of each certificate issued under this order, and shall file a report thereof with the court.

N. GOFF,
Circuit Judge.

June 24, 1893.

Consented to.

BUTLER, STILLMAN & HUBBARD,
Att'ys for C. T. Co.

And on another day, to-wit: June 24th, 1893, came E. R. Schnieder and presented his petition, which, with the order entered thereon, is as follows:

PETITION OF E. R. SCHNEIDER.

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF
VIRGINIA..

William P. Clyde and others	} In Equity.
<i>vs.</i>	
Richmond and Danville Railroad Company and others.	

To the Honorable Judges of said Court:

The petitioner, E. R. Schneider, respectfully shows:

He is a resident and property holder at Augusta, Georgia. That prior to the appointment of receivers in this cause, to-wit: about June 1st, 1892, a large number of suits were instituted in the City Court of Richmond County, Georgia, by divers creditors against the Richmond and Danville Railroad Company when the said corporation was in possession of its system of railways, and operating the same as a going concern.

In each of such suits the plaintiffs caused a writ of attachment to be sued out against the said Railroad Company, and caused the same to be levied upon the cars, supplies, income and money of said corporation and thereby seriously interfered with the operation of its road.

That to relieve its equipment and property from such seizure and enable it to conduct its business as a carrier without further interruption, the said Railroad Company, through its officers, requested your petitioner to become its surety, and for its benefit and protection to execute a bond in each of said attachment cases, and thereby release all

such corporate property from seizure, and it was then and expressly agreed by said railroad corporation that your petitioner should be fully protected and indemnified as such surety, and that the said attachment suits should be by it fully defended, and it would promptly pay and discharge any judgments rendered in any of such actions and interest and costs, and save your petitioner harmless thereon.

Petitioner thereupon agreed to and did become surety for such corporation, and signed, executed and delivered to the attaching officer a bond in each of such suits, and thereby became personally responsible for any judgment rendered in such action, together with interest and cost.

Thereupon the equipment, property and money of said railroad corporation, which had theretofore been seized, was released, and it was thenceforth enabled to and did operate its system of roads until the appointment of receivers herein.

Thereafter, to-wit: in January, 1893, the said attachment actions came on for trial, and judgments were rendered in each of such causes against the said Railroad Company, and your petitioner as surety, for divers sums due to the respective plaintiffs, together with interest and costs. Thereafter the said plaintiffs caused executions to be sued out on their respective judgments, and gave the sheriff peremptory instructions to levy such writs on the property of your petitioner. The corporation failed and refused to pay any of such judgments or protect its surety. In order to save his property from such sale, petitioner was forced to and did pay the full amount of all such judgments, together with interest and cost, amounting to a total of \$23,826.07.

An itemized list of such payments is herewith annexed and made a part of this petition.

The said debts so enforced against and paid by your petitioner as such surety were incurred by the said railroad corporation as current expenses of the railroads which it was then operating, and were accordingly entitled to be repaid out of the current income of the road, and as such are preferential charges against the earnings coming into the receivers' hands.

Wherefore the petitioner prays that the court will enter in order directing the receivers in this cause to repay the full sum so paid out by him, together with interest thereon and expenses, and for all further proper relief.

R. R. SCHNEIDER.

By R. R. CHAPMAN.

STATE, COUNTY AND CITY OF NEW YORK, } ss:

E. R. CHAFMAN, on oath, says he is the agent of the petitioner, and that the matters set out in the foregoing petition are true.

E. R. CHAPMAN.

Subscribed and sworn to before me this June 5th,
1893.

Notarial
Seal.

GEO. R. EVANS,
Notary Public, No. 27.
County N. Y.

SCHEDULE OF JUDGMENTS PAID.

Attachment vs. R. & D. R. R. Co.	Amount	Interest.	Costs.	Total.
No. 3, Jos. P. Walker.	\$ 159 50	\$ 10 88	\$ 41 25	211 63
" 4, Murphy & Company.	282 00	16 86	44 60	343 46
" 5, Chas. C. Cumming.	737 00	44 79	29 40	811 19
" 6, Bank of Hampton.	2,652 86	158 12	37 25	2,848 23
" 7, A. T. Goethe.	2,395 89	145 01	39 75	2,580 65
" 8, Thomson-Houston Elec. Company.	459 96	28 17	14 60	502 73
" 14, J. J. Dicks & Bro.	295 60	18 11	33 55	347 26
" 15, Wm. A. Blount.	1,034 54	91 70	34 00	1,160 24
" 16, Richard H. Walker.	2,084 68	124 43	33 50	2,242 61
" 17, Francis M. Young.	4,696 12	280 18	34 00	5,010 30
" 18, Fuller, Hatcher & Co.	297 15	17 83	38 50	353 48
" 20, J. J. Dicks & Bro.	176 50	11 19	32 00	219 69
" 25, C. F. W. Ficken.	3,241 11	212 78	33 85	3,487 74
" 26, Z. Daniel & Co.	127 75	7 52	28 35	163 62
" 27, Z. Daniel & Co.	1,266 20	75 85	29 95	1,372 00
1893. Jan. 24, W. B. Daniel.	79 72	1 02		80 74
Feb. 3, A. & S. R. R. Co.	1,952 40	118 05	20 05	2,090 50
	\$21,938 98	\$1,362 49	\$524 60	\$23,826 07

NOTICE OF FILING FOREGOING PETITION.

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF VIRGINIA.

William P. Clyde and others
vs.
Richmond and Danville Railroad
Company and others.

} In Equity.

Please take notice that at 10 o'clock A. M., June 24th, the undersigned will present to the Hon. Nathan Goff, at Chambers at Baltimore, Md., their petition in the above entitled cause, a copy of which is herewith served upon you, and pray for the entry of an order thereon.

E. R. SCHNEIDER,
Petitioner.

Service admitted.

BUTLER, STILLMAN & HUBBARD,
Sol's. C. T. CO.

RICHMOND & DANVILLE R. R. CO.,
W. G. OAKMAN, Pres't.

ORDER ON FOREGOING PETITION.

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF
VIRGINIA.

William P. Clyde and others	}	In Equity.
<i>vs.</i>		
Richmond and Danville Railroad Company and others.		

In the matter of the petition of E. R. Schneider :

Come again this June 24th, 1893, the parties and the receivers, by their respective solicitors, and comes also E. R. Schneider and files his petition praying for relief and reimbursement of money paid out by him as surety for the said Richmond and Danville Railroad Company on certain judgments in divers attachment suits at Augusta, Georgia.

On consideration whereof, it appears to the court that the said claim and payment ought to be held as preferential and the said surety protected by the receivers out of the current income coming into their hands from the operation of the railroads.

It is therefore ordered that the receivers herein are authorized and instructed to pay out of such funds in their hands, or coming therein, as may be available, after complying with the prior orders herein, over to the said E. R. Schneider, petitioner, or his properly constituted agent, the sum of \$23,826.07, together with interest thereon from the date of payment, and take proper receipt therefor; provided that no payment be made hereunder until all securities deposited as collateral with the petitioner or any other person, to protect or indemnify the petitioner, directly or indirectly, in connection with his suretyship, be delivered to the receivers, and all other security held by him be transferred to them.

N. GOFF,
Circuit Judge.

And on another day, to-wit: July 17, 1893, came the Special Masters and filed a report, which is as follows :

REPORT OF SPECIAL MASTERS AND AUDITORS.

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF
VIRGINIA.

William P. Clyde et al.

versus

The Richmond and Danville Rail-
road Company et al.

The Honorable Judges of said Court :

We, the undersigned, Masters and Auditors, appointed under the order of June 28th, 1892, in the above entitled cause, beg to report the examination of \$123,271.51 in value of additional claims against the Richmond and Danville Railroad Company coming within the order of June 28th, 1892, the details of which will be found in the accompanying report, marked Exhibit "A." This amount is made up as follows :

From increase of allowances made under Schedule No. 1 (previously filed),	\$378 19
From Schedule No. 4 (previously filed),	94,268 11
Upon investigation thus far made of the claims embodied in this schedule we find that additional claims above stated were actually created for the benefit of the lines of these roads in the hands of these receivers.	
From Schedule No. 5 (previously filed),	639 12
This amount having been found, upon further investigation, to be within the six months immediately preceding the appointment of receivers.	
From Schedule No. 6 (previously filed),	1,030 60
Further investigation has proven that claims to this extent had been embraced in the above schedule as prior to Decem- ber 17th, 1891, owing to errors in stating the dates of the accounts.	
From Schedule No. 12 (not yet filed),	26,955 49
This schedule is a list of all claims that have been presented against the com- pany since the making up of our first report, filed July 25th, 1892, of the claims so scheduled. The above stated amount, in addition to the amount stated in our report of October 5th, comes within the order of June 28th, 1892. For the further information of the court we would report that we have, since the commencement of our examinations of claims, under the order of June 28th, reported as follows :	
Schedule No. 1, filed with our report of July 25th, '92,	771,528 94
Filed with our report of October 5th, 1892,	95,128 24
Filed with this report, as per Exhibit "A,"	123,271 51
Total claims passed upon,	<hr/> \$989,928 69
Less deductions on account of changes found necessary in further examination of cer- tain claims and of amounts disallowed by us subsequent to the filing of our reports, by reason of the parties in whose favor the allowances were made having been found to be indebted to the Richmond and Danville Railroad, and toward the pay- ment of which indebtedness the allowances that had been made were used,	<hr/> 15,799 85
Net amount allowed to June 30th, 1893,	<hr/> \$974,128 84

Of this amount there has been paid to and including June 30th, 1893,	958,436 09
--	------------

See Exhibit "B."

Leaving unsettled by the receivers of the claims passed upon by your Masters and Auditors,	15,692 75
--	-----------

See Exhibit "C."

Many of these amounts have as yet not been called for, but the larger portion of them are being held by the officers of the receivers, pending the adjustment and settlement of other accounts with the parties in whose favor these allowances were made. The final adjustment of the accounts by the receivers, due to the Richmond and Danville Railroad Company prior to their appointment, may possibly result in the cancellation of some portion of this unpaid amount, but as to this nothing definite can be arrived at until a final settlement of the many yet unadjusted accounts due to the Richmond and Danville Railroad Company prior to the appointment of receivers.

For your information we also append hereto a statement of cash account growing out of the sale of the \$1,000,000 of receivers' certificates, authorized in said order of June 28th, 1892.

Sold \$200,000.00 at par,	200,000 00
760,000.00 at 101,	767,600 00

\$960,000.00	Total received from sale	
	of \$960,000,	\$967,600 00

Paid, as shown by Exhibit "B,"	958,436 09
--------------------------------	------------

Cash on hand June 30th, 1893,	\$9,163 91
-------------------------------	------------

Deposited as follows:

West End National Bank, Wash- ington, D. C.,	\$8,873 92	
Mechanics National Bank, Balti- more, Md.,	289 99	9,163 91

We beg to report further that there have been filed

with us, as Special Masters and Auditors, for approval under the order of June 28th, 1892, the claims shown and stated in Exhibit "D," filed with this report, amounting in the aggregate to \$21,758.73. These claims are for supplies and material purchased by the Richmond and Danville Railroad Company subsequent to December 16, 1891. The orders on which the material and supplies in question were furnished were the orders of the general purchasing agent of the Richmond and Danville Railroad Company and of other officers of that company authorized to make the purchases. We have examined these claims and found the amounts to be correct, but we have not felt authorized to pass the same for payment without further instructions of the court, because the material and supplies in question were actually used and consumed in the maintenance and operation of the lines of the Central Railroad and Banking Company of Georgia. The second paragraph of the order of June 28th provides that "the funds realized from such issue of certificates shall constitute a special fund, which shall be held and used by the receivers exclusively, to pay and discharge all such voucher and supply debts as were created by the Richmond and Danville Railroad Company in and about the operation of its roads and leased and operated lines *now in charge of the receivers*, during the six months immediately preceding June 15th, 1892, and which shall first be examined and approved as valid claims accrued for operating the roads by Mr. M. F. Pleasants, of Richmond, Va., and Mr. A. S. Dunham, of Boston, Mass., who are now appointed as Special Masters and Auditors for such purpose, and directed, with all convenient speed, to investigate all such vouchers and claims, and report upon the same, from time to time "

The lines of the Central Railroad and Banking Company of Georgia were not, and have never been, in charge of the receivers appointed in this cause. We have, therefore, felt constrained to withhold our approval of the claims stated in said Exhibit "D," because the material and supplies, on account of which those claims are made, were used or consumed in the operation of the lines of the Central Railroad and Banking Company of Georgia. The material and supplies for which those claims are made were shipped by the claimants to the Manchester and Birmingham storehouses, or other distributing points of the Richmond and Danville Railroad Company, and the claimants were not advised and had no means of knowing that the material or supplies so furnished by them would be used in the operation of the lines of the Central Railroad and

Banking Company of Georgia, or would not be used in the operation of the lines now in the hands of the receivers in this cause. Indeed, in many cases, so far as we have been able to ascertain, there was no specific intention on the part of the officers of the Richmond and Danville Railroad Company ordering the supplies, at the time the order was given, that the supplies should be used in the operation of the lines of the Central Railroad, rather than in the operation of the lines now in the hands of the receivers of this court. The re-consignment of the supplies to the Central Railroad was merely a matter of convenience and chance.

We respectfully ask the directions and instructions of the court as to the final disposition by us of these claims, and especially as to whether we shall or shall not approve the same for payment out of the special fund provided by the issue of receivers' certificates under the order of June 28th, 1892, in this cause.

All of which is respectfully submitted.

A. S. DUNHAM,
M. F. PLEASANTS,
Special Masters and Auditors.

ORDER ON FOREGOING REPORT.

On the foregoing report of the Special Masters it is ordered that the Special Masters pass and approve for payment, under the order of July 28th, 1892, the claims stated in Exhibit D, filed with said report.

Mar. 30th, 1894.

N. GOFF,
Circuit Judge.

And on the same day, to-wit: on the 17th day of July, 1893, the following order was entered;

ORDER SETTING FOR HEARING CERTAIN CLAIMS.

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF
VIRGINIA.

W. P. Clyde et al.

vs.

Richmond and Danville R. R. Co.
et al.

Upon the report of Messrs. M. F. Pleasants and A. S. Dunham, Special Masters and Auditors, this day filed, asking the directions and instructions of the court as to the approval by them of the claims set forth and stated in Exhibit "B," filed with this report, it is ordered that the

matter of the approval of said claims be set for hearing at the opening of the court at Richmond, Virginia, the second Tuesday of October, 1893, and that the clerk mail to each of the parties in this case, or their respective solicitors of record, a copy of this order.

July 17, 1893.

N. GOFF,
Circuit Judge.

And on another day, to-wit: the 28th day of July, 1893, came the complainants, and presented a petition, which petition, together with the order thereon, is as follows:

**PETITION OF COMPLAINANTS FOR DEPOSIT OF
COLLATERALS.**

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

William P. Clyde and others	} In Equity.
<i>vs.</i>	
The Richmond and Danville Railroad Company and others.	

The complainents respectfully show to the court that when this action was instituted and the receivers were appointed over all of the railroads and assets of the said Richmond and Danville Railroad Company, it was indebted to divers trust companies, banks, bankers, corporations and individuals to the amount of four and a-half millions of dollars, for which such creditors held promissory notes of said railroad corporation, and also, and as collateral thereto, securities amounting at the par value thereof to over the sum of ten millions of dollars, of which over half the par amount thereof had been loaned to the said Richmond and Danville Railroad Company by the Richmond and West Point Terminal Railway and Warehouse Company.

On August 6th the complainants filed their petition in this cause, setting forth such facts in detail, together with a list of such creditors, and the amount and character of the securities held as collateral for such indebtedness, and on such petition of the complainants this court entered a decretal order authorizing the receivers to enter into arrangements with the creditors of such class, and holding such collateral, to extend their respective loans for two years on the terms and conditions in such order stated, and such loans have been under the said order extended, and are still held by such creditors under the arrangement provided for in such order.

Since the entry of said order a plan of reorganization of the properties of the Richmond and West Point Terminal Railway and Warehouse Company, the Richmond and Danville Railroad Company and its leased and proprietary lines, and of the East Tennessee, Virginia and Georgia Railway Company and its leased and proprietary lines, has been formulated by Messrs. Drexel, Morgan & Co., of New York city, and, as the complainants are advised and believe, has been accepted with practical unanimity by the stockholders and all classes of securities of such corporations and their system of roads. By the requirements of such plan of reorganization many of the securities at present resting on the properties are required to be surrendered, to be foreclosed and ultimately cancelled, and new securities issued under the said plan of reorganization. On the surrender of all such classes of securities, a reorganization receipt is given by Messrs. Drexel, Morgan & Co., which receipt possesses the same commercial value in the money markets in New York city and elsewhere as the deposited security which it represents. Many of the securities which are held as collateral to the said Richmond and Danville bank loans, so extended as aforesaid, are of the class which are required by the said plan of reorganization to be surrendered for exchange into trust receipts and ultimately new securities. Many of the creditors holding such collateral are desirous of depositing such securities under such plan or reorganization, but hesitate in adopting such a course without the previous leave of the court first had and obtained.

The premises considered, the complainants pray that the court will enter an order herein allowing any of the said creditors holding the negotiable paper of the Richmond and Danville Railroad Company, as aforesaid, with any of the aforementioned stocks and bonds as collateral for such debts, to deposit the same under the plan of reorganization of the said properties being promoted by Messrs. Drexel, Morgan & Co. without prejudice to any of their rights as creditors and pledgees as they now exist; and the trust receipts and new securities issued and obtained by reason of the deposit of any securities by any of such creditors of the Richmond and Danville Railroad Company shall be held by such depositing creditor as collateral with like effect as the securities now are held by such creditor.

That it be further ordered that the receivers of the court in this cause be authorized and directed to evidence their assent to such deposit of securities under such plan of reorganization in such manner as shall be proper to

fully preserve, protect and assure the rights of any creditor depositing securities held by him as collateral, under the said reorganization plan.

WILLIAM P. CLYDE AND OTHERS,
Complainants.

HENRY CRAWFORD,
Solicitor.

STATE, CITY AND COUNTY OF NEW YORK :

JOHN C. MABEN, on oath, says that he is one of the complainants in the above entitled action; that he has read the foregoing petition and knows the contents thereof, and that the matters therein stated are true, and that he verily believes that it is for the interest of the said Richmond and Danville Railroad Company and its creditors that the order prayed for in the foregoing petition should be granted.

J. C. MABEN.

Subscribed and sworn to before me this 13th day of July, 1893.

{ Notarial
Seal. }

JAMES J. MURPHY,
Notary Public Kings Co.

Cert. filed in N. Y. Co.

ORDER ALLOWING DEPOSIT OF COLLATERAL UNDER PLAN OF REORGANIZATION.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

William P. Clyde and others
vs.
Richmond & Danville Railroad
Company and others.

Now, on this twenty-eighth day of July, 1893, come the parties hereto, by their respective solicitors, and come also the receivers heretofore appointed in this cause, and complainants file their petition in writing, praying for the entry of an order allowing the creditors, holding bonds and stocks as collateral pledged to them by the Richmond & Danville Railroad Company to secure loans made to it, to deposit any of such pledged securities under the scheme of reorganization of such railway property now being promoted by Messrs. Drexel, Morgan & Co., of New York, and accept in lieu of such securities the trust receipts is-

suable under such plan of reorganization without prejudice to any subsisting liens or rights of such creditors.

Upon consideration of which petition, and it appearing to the court that the relief prayed will be for the interest of said pledgees and of the said Richmond & Danville Railroad Company, and the trust estate in charge of the receivers, it is, therefore, ordered that any of the creditors of the Richmond & Danville Railroad Company, holding any stocks or bonds pledged to them as collateral security for loans made to said Richmond & Danville Railroad Company, are at full liberty to deposit any of such pledged stocks or bonds under the reorganization plan being promoted by Messrs. Drexel, Morgan & Co., of New York, and of which Messrs. C. H. Coster, George Sherman and Anthony J. Thomas constitute the committee, and to accept in lieu of such stocks or bonds so deposited under the said plan the trust receipts provided therein to be issued on the deposit of such securities and any new securities issuable under such plan in place of such surrendered securities. Such deposit of stocks or bonds by any such creditor under such reorganization plan shall be without prejudice to his rights, liens and remedies under the subsisting pledge under which such creditor now holds any of such stocks or bonds, and the trust receipts and new securities issued to such depositing creditor under such reorganization plan shall be held in pledge by the said depositing creditor for the payment of his debt in all respects as the present pledged stocks and bonds are now held, without any detriment to the existing rights, liens, claims or remedies of such creditor.

It is further ordered that, for the better protection of any creditor so desiring to deposit any of the stocks or bonds at present held in pledge as aforesaid, the receivers shall evidence in such manner as may be proper their assent, as officers of this court, to the deposit of such securities under such reorganization plan.

N. GOFF,
Circuit Judge.

Order approved.

BUTLER, STILLMAN & HUBBARD,
Sol'rs for Central Trust Co.

And on another day, to-wit: on the 21st day of August, 1893, came Frederic W. Huidekoper and Reuben Foster, receivers, and presented their petition for the appointment of a Master, which petition, with the order thereon, is as follows:

**PETITION OF RECEIVERS FOR APPOINTMENT OF MASTER
TO AUDIT THEIR ACCOUNTS.**

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

William P. Clyde and others	}	In Equity. No. 461.
<i>vs.</i>		
The Richmond and Danville Railroad Co. and others.		

To the Honorable the Judges of said Court :

The petition of Frederic W. Huidekoper and Reuben Foster, receivers, respectfully shows :

I. That your petitioners were, by order passed in this cause the 15th day of June, 1892, appointed temporary receivers of all the railroads and property of the Richmond and Danville Railroad Company, and authorized and directed to operate the said company's system of railroads and administer its affairs, as in said order provided. That by subsequent order entered herein on the 16th day of August, 1892, the appointment of your petitioners was continued and made permanent. That your petitioners duly qualified as such receivers, and continued from the date of their appointment to operate the property in their hands and administer the affairs of said company up to midnight, July 31st, 1893.

II. That at midnight July 31st, 1893, your petitioners, in compliance with the orders and instructions of this court, delivered possession of all the property of the Richmond and Danville Railroad Company, in their hands as receivers under the orders of this court, to Samuel Spencer, Frederic W. Huidekoper and Reuben Foster, the receivers of this court, appointed in the equity cause herein depending of the Central Trust Company of New York vs. The Richmond and Danville Railroad Company, and as such authorized to demand and receive said property from your petitioners. That thereupon your petitioners necessarily ceased to operate the system of railroads of said Richmond and Danville Railroad Company and ceased to receive and disburse the revenues therefrom ; and that by said orders of this court the said receivers appointed in the case of the Central Trust Company of New York vs. The Richmond and Danville Railroad Company, are required to assume and discharge all the obligations of your petitioners as receivers, and are authorized to collect and apply all the assets of your petitioners as receivers arising from their operation of the property. That the only fund remaining in your petitioners' hands is that derived from the sale of

the receivers' certificates, authorized by the order of this court in this cause, entered on the 28th day of June, 1892, which fund, by said order, is required to be kept separate and disbursed only in payment of claims approved by the Special Masters and Auditors appointed in said order. It is expected that all claims payable out of this fund will in a short time be settled and the account closed.

III. Your petitioners further show that they have heretofore filed in this cause monthly reports of their receipts and disbursements, in accordance with the orders of the court. That, by reason of the facts above stated, they are advised that the accounts of their receivership should be finally audited, and that their administration of the receivership in the discharge of their duties as receivers and the compensation to be allowed them for their services should be finally passed upon by this Honorable Court.

Wherefore your petitioners pray that an order be entered herein appointing a Master and Auditor to examine and audit the accounts of your petitioners as receivers, and to report the results of his examination to the court, and also to ascertain and report what compensation should be allowed your petitioners for their services as such receivers, with a view to the final discharge of your petitioners and their bondsmen.

And your petitioners will ever pray, &c.

F. W. HUIDEKOPER,
REUBEN FOSTER.

HUGH L. BOND, JR.,
Solicitor for Petitioners.

ORDER APPOINTING SPECIAL MASTER AND AUDITOR.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

William P. Clyde and others	} In Equity.
<i>vs.</i>	
The Richmond and Danville Rail- road Company and others.	} No. 461.

Order upon the petition of Frederic W. Huidekoper and
and Reuben Foster, Receivers.

Come now on this 21st day of August, 1893, Frederic W. Huidekoper and Reuben Foster, receivers heretofore appointed in this cause, and presented their petition to the court asking for the appointment of a Master and Auditor to examine and report upon their accounts as receivers;

also to report what compensation should be allowed them for their services, with a view to the final discharge of the said receivers and their bondsmen.

Wherefore it is upon said petition ordered that Thomas S. Atkins, of Richmond, Va., by reason of his skill in accounting and experience in such matters, be, and he is hereby appointed a Special Master and Auditor for said purposes, and directed, with all convenient speed, to examine the accounts of said receivers and their vouchers, and report the result of his examination to the court. He is also directed to ascertain and report to the court the compensation which should be allowed said receivers for their services, and to report his finding to the court, with such testimony as may be taken by him in the matter.

N. GOFF,
Circuit Judge.

And on another day, to-wit: March 3rd, 1894, came Thos. S. Atkins, Special Master and Auditor, and filed his report, as follows :

REPORT OF SPECIAL MASTER AND AUDITOR.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

William P. Clyde & als.	}	No. 461. In Equity.
<i>vs.</i>		
The Richmond & Danville R. R. Co. and others.		

To the Honorable Judges of said Court :

In pursuance of a decretal order, made and entered in this cause, and bearing date on the 21st day of August, 1893, by which it was referred to Thos. S. Atkins, of Richmond, Va., who was thereby appointed a special master and auditor for the purpose, to examine the accounts of Frederic W. Huidekoper and Reuben Foster, the receivers heretofore appointed in this cause, and their vouchers, and report the result of his examination to the court :

I, Thos S. Atkins, special master and auditor as aforesaid, do respectfully report that I have investigated the matter so referred to me, and examined the accounts and vouchers of the said receivers, with the exception of the vouchers for the payments made to the employees of the road, which consist of cancelled checks, numbering about 130,000. These checks have been distributed alphabetically, and to get each check and compare it with the pay-rolls would be an almost endless job.

The accounts of the receivers cover a period of thirteen and one-half months, from the 16th day of June, 1892, to the 31st day of July, 1893, and have been made out and filed monthly with the clerk of the court, as directed by the order of court under which they are acting. They are certified to as correct by the receivers, and their treasurer, auditor and comptroller, and the latter, also, certifies that the disbursements made are all within the order of court. The accounts are correctly stated and properly supported by vouchers. The vouchers for all disbursements made by the receivers on account of traffic balances, loss and damage claims, judgments, &c., interest on bonds, &c., and material, supply and other claims of a like character, between 40,000 and 50,000 in number, I have personally compared with the accounts, and find they agree. These vouchers have been correctly executed, and neatly kept and filed.

The perfect system by which the accounts of the receivers are kept requires the personal attention of the comptroller, treasurer and auditor to each item, and the agreement of their several books, rendering it almost impossible for an error or fraud to be perpetrated, except through the payment of a false claim, which could only be detected by the investigation of the *merits* of each claim.

The accounts and books of the receivers show the following receipts and disbursements :

1892.

RECEIPTS.

June 16. To cash received from Richmond
& Danville R. R. Co. this day, \$ 480,427 91

For the period from June 10, 1892, to July
31, 1893.

To Transportation Receipts, freight and passenger,	12,555,601 09
To Transportation Receipts, express,	260,572 02
" " mail,	638,581 68
Receipts from miscellaneous sources,	297,518 34
Traffic Balances from connecting lines,	424,315 71
Rec'd from Balto. & Ohio acct. rental,	62,970 84
" " Ches. & Ohio R. R. "	37,250 00
" " Int. on Receivers' Certificates,	3,454 37
" " Accounts prior to June 16, 1892,	671,363 40
	<hr/>
	\$15,432,055 36

1893.

Aug. 1st. Balance to Spencer, Huidekoper
& Foster. \$ 141,325 19

DISBURSEMENTS.

For the period from June 16, 1892, to July 31, 1893.

By Traffic Balances prior to June 16, 1892,	\$ 122,493 78
" Loss and Damage Claims " " "	75,062 65
" Pay Rolls " " "	602,287 89
" Material Supplies, &c. " " "	437,351 90
" Traffic Balances subsequent " " "	1,204,067 32
" Loss and Damage " " "	78,229 38
" Pay Rolls " " "	5,238,689 99
" Materials, Supplies, &c. " " "	3,732,346 75
" Interest and Rentals,	3,253,956 89
" Car Trust Payment and Sinking Fund,	481,893 16
" Int. on Receivers' Certificates,	56,400 00
" Purchase 4 Locomotives,	7,950 46
" Balance Cash on hand,	141,325 19

\$15,432,055 36

In addition to the foregoing receipts and disbursements, the receivers have sold, and distributed the proceeds, of \$1,000,000 of Receivers' Certificates. This fund was disbursed under a special order of the court, and is accounted for by the commissioners appointed for the purpose by the order.

Your special master and auditor recommends that the said accounts of F. W. Huidekoper and Reuben Foster as receivers of the Richmond and Danville Railroad Company for the period from the 16th day of June, 1892, to the 31st day of July, 1893, be accepted and passed.

Respectfully submitted,

THOS. S. ATKINS, Sp'l Master and Auditor.

And on another day, to-wit: April 13th, 1894, the following order was entered:

ORDER CONFIRMING REPORT OF SPECIAL MASTER AND AUDITOR.

IN THE CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

Wm. P. Clyde et al	}	In Equity. Consolidated Causes.
<i>vs.</i>		
Richmond & Danville R. R. Co. et al.		
and		
Central Trust Company		
<i>vs.</i>		
Richmond & Danville R. R. Co.		

Upon the report of Thos. S. Atkins, special master and auditor, herein filed on the third day of March, 1894, re-

porting his examination of the accounts and vouchers of Frederic W. Huidekoper and Reuben Foster, receivers, and recommending that said accounts be accepted and passed, it appearing to the court that no exceptions have been filed to said report, and no cause being shown against the confirmation of the same, it is now, this 13th day of April, 1894, ordered that the said report be and the same is hereby finally ratified and confirmed; that the accounts of Frederic W. Huidekoper and Reuben Foster, receivers, be accepted and passed, and that the said receivers and their respective sureties on the bonds filed by them, respectively, as required by the orders appointing them receivers, be released and discharged from all liability for the period covered by said accounting, to-wit: from the 16th day of June, 1892, to the 31st day of July, 1893.

N. GOFF, Circuit Judge.

BILL OF COMPLAINT FOR THE FORECLOSURE OF CONSOLIDATED MORTGAGE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

UNITED STATES OF AMERICA. }
Eastern District of Virginia. } ss:

To the Honorable the Judges of the Circuit Court of the
United States for the Eastern District of Virginia,
Sitting in Equity:

Central Trust Company of New York, a corporation created by and existing under the laws of the State of New York, and a citizen of the said State of New York, brings this its bill of complaint against the Richmond and Danville Railroad Company, a railroad corporation created by and existing under the laws of the State of Virginia, and a resident and citizen of said State of Virginia, and an inhabitant of the Eastern District of Virginia, which is the district of the residence of the said The Richmond and Danville Railroad Company, and thereupon your orator complains and says:

I. The Richmond and Danville Railroad Company (hereinafter styled the Danville Company) was created and organized under the laws of the State of Virginia, on or about the 9th day of March, 1847, and by its original charter and the several acts of the General Assembly of said State of Virginia, amendatory thereof and supplementary thereto, it was, at the times hereinafter mentioned, authorized to locate, construct and operate a line of railway between Richmond and Danville, Virginia, and to acquire the control of other railroads and transportation lines both in the State of Virginia and elsewhere, by a purchase or

lease of such properties, and to purchase and hold, or to guarantee the bonds or stocks thereof, and operate and manage all such lines of railway and enjoy the income thereof.

II. Your orator was, at the times hereinafter mentioned, and now is, a corporation created and existing under the laws of the State of New York, and bearing the corporate name of the Central Trust Company of New York, and at all the times hereinafter mentioned it was and now is fully authorized and empowered under the terms of its charter to take and hold in trust, the property transferred and conveyed to it in trust as hereinafter stated, and to execute and perform the trusts imposed upon it under and by virtue of the mortgage or deed of trust hereinafter described.

III. On or about the 5th day of October, 1874, the Danville Company made, executed and delivered to Isaac Davenport, Jr., and George B. Roberts, as trustees, its certain mortgage or deed of trust of that date, whereby it conveyed to said trustees the main, branch and leased lines of railroad, real and personal property, rights, interests and estates therein described, to secure the payment of the principal and interests of its bonds, dated October 5, 1874, and payable in gold coin January 1, 1915, to an aggregate amount not exceeding \$6,000,000, with interest at the rate of six per cent. per annum, payable semi-annually, and all of said bonds were issued and are outstanding.

Thereafter your orator was duly substituted and appointed sole trustee of and under said last mentioned mortgage or deed of trust, and is now such trustee.

On February 1, 1882, the Danville Company executed and delivered to your orator, as trustee, its certain mortgage or deed of trust of that date, conveying to your orator the main, branch and leased lines of railroad, real and personal property, rights, interests and estates therein described, to secure the principal and interest of its debenture bonds, dated February 1, 1882, and payable forty-five years after said date, to the aggregate amount of \$4,000,000, with interest at not exceeding the rate of six per centum per annum, payable out of the net earnings of the company in the manner provided in said deed of trust, and all of said bonds were issued and are outstanding.

IV. By virtue of its charter powers the Danville Company acquired, prior to October 22d, 1886, large interests in the bonds and stocks of railroads in North Carolina and other States, forming a part of its leased, owned and operated system of railroads, and became liable, as guarantor of

the first mortgage bonds of the Northwestern North Carolina Railroad Company, issued under a mortgage deed of trust to H. H. Marshall and E. A. Barber, trustees, dated October 24th, 1872, to the amount of \$500,000.

V. On or about the 21st day of October, 1886, the Board of Directors of the Danville Company, in the lawful exercise of their powers, at a meeting duly held at the office of said company on said last mentioned day, determined to issue coupon bonds of said company, to be denominated Consolidated Mortgage Gold Bonds, each for the sum of one thousand dollars, or two hundred pounds, dated the first day of October, 1886, signed by the President and countersigned by the Secretary, with the corporate seal affixed, and payable fifty years after date in gold coin of the United States of America, or sterling money of Great Britain, with interest at not exceeding five per centum per annum, payable semi-annually on April 1st and October 1st on each and every year, and with privilege of registration at the option of the holder, and that to secure the payment of the principal and interest thereof, the President be authorized and directed to duly execute, acknowledge and deliver in the name of said Danville Company and under its corporate seal, a mortgage deed of trust to your orator, as trustee for the holders of said bonds, conveying all the main branch and leased lines, real and personal property, rights, interests and estate of the Danville Company, as hereinafter more fully mentioned and described.

At the same meeting the said Board of Directors further determined that the Consolidated Mortgage Gold Bonds should be limited to an issue of eleven million, two hundred and twenty thousand dollars of bonds to be reserved and retained by your orator for the sole purpose of taking up, refunding, exchanging or providing for the payment of the above recited bonded indebtedness and liability of the said six million dollars of six per cent. gold bonds, and of the said four million dollars of Debenture Bonds and unpaid interest thereon, and of the said five hundred thousand dollars of first mortgage guaranteed Northwestern North Carolina Railroad Company Bonds, and thereafter to an amount of bonds not to exceed the sum of fifteen thousand dollars per mile of railroads then or thereafter to be owned, leased, operated or controlled by the said Danville Company, bearing such rate of interest, not to exceed five per centum per annum, as the Board of Directors might determine, to be issued from time to time in the corresponding amounts to and only as and when mortgage bonds of any such railroads having priority of lien, and issued at a rate not to

exceed fifteen thousand dollars per mile, should be deposited with your orator as part of the property pledged, conveyed and covered by and subject to all the terms, conditions and provisions of said Mortgage Deed of Trust, whereby the said Consolidated Mortgage Gold Bonds were to be secured, and in addition thereto bonds to the amount of twenty-five hundred dollars per mile of such mileage might be issued for the purpose of purchasing equipment, and not otherwise.

And on or about the 22d day of October, 1886, in the lawful exercise of its corporate powers to that end, the Danville Company did, in pursuance of such resolutions of said Board of Directors, make and execute its Consolidated Mortgage Gold Bonds, to-wit., eleven thousand two hundred and twenty bonds, bearing date the first day of October, 1886, by each of which bonds the Danville Company, for value received, acknowledged itself indebted to, and promised to pay to your orator, or bearer, the sum of one thousand dollars in gold coin of the then existing standard of weight and fineness of the United States of America, payable at the financial agency of said Danville Company, in the City of New York, on the first day of October, A. D. 1936, with interest thereon in like gold coin, at the rate of five per centum per annum, payable semi-annually on the first days of April and October in each and every year on the presentation and surrender at such agency of the proper interest coupon attached to said bonds.

On or about the 22d day of October, 1886, the said Danville Company, in the due exercise of its corporate power thereto in that behalf by it possessed, and being thereunto duly authorized by the vote of its Board of Directors did, for the purpose of securing the payment of said bonds and the coupons thereon, as well as of all bonds, and the coupons appertaining thereto, which might thereafter be issued under and in accordance with the terms and provisions of said Mortgage or Deed of Trust, without preference or priority, and equally and ratably, duly make, execute and deliver to your orator, as trustee, as hereinafter recited, its certain mortgage or deed of trust bearing date on said 22d day of October, 1886, whereby it granted, bargained, sold, conveyed, assigned, transferred and set over unto your orator and its successor or successors in trust therein and thereby created, and its and their assigns, the following described real and personal property by the following description—that is to say (the words “said party of the first part” used in said description referring to and meaning The Richmond and Danville Railroad Company):

“All and singular the entire railway of The Richmond

and Danville Railroad Company, extending from and including the depot lot in the City of Richmond to the town of Danville, in the State of Virginia, and all its lateral road or branches, with all the lands attached and belonging to said railway and branches, and used in connection therewith, including all depot lots, depots, wharves, docks, warehouses machine-shops, bridges and all other structures and their appurtenances, together with all the Company's engines, cars, rolling-stock, equipment, machinery, implements and materials, whether the said cars, engines and rolling-stock are now used upon the Richmond and Danville Railroad, or any of its leased lines, or any of its connecting lines, and all other property, works and effects of the said The Richmond and Danville Railroad Company appertaining to or used in connection with the said railway and branches or in operating the same, wherever the same may be situated, or in whatever manner the same may be held, except the branch road extending from the main line of The Richmond and Danville Railroad, in the City of Manchester, to a point on the James River opposite to that part of the City of Richmond called Rocketts, and except the real estate, wharves, warehouses, and terminal facilities owned by The Richmond and Danville Railroad Company on or near the James River opposite to Rocketts, which are not intended to be included in this deed.

"Also all property and effects so pertaining to and to be used in connection with said railway and in operating the same which the said Company may hereafter at any time acquire.

"Also the corporate rights, privileges, and franchises of said Company of every kinds now owned or which may hereafter be accquired.

"Also the leasehold and all the rights acquired by The Richmond and Danville Railroad Company in and to the Richmond, York River and Chesapeake Railroad by a certain contract made on the ninth day of July, eighteen hundred and eighty-one, between the said Richmond, York River and Chesapeake Railroad Company and the said The Richmond and Danville Railroad Company, except the interest acquired by The Richmond and Danville Railroad Company under the said contract in the stock of the Baltimore, Chesapeake and Richmond Steamboat Company, and in the real estate, warehouses, wharves and terminal facilities at West Point owned by the Richmond, York River and Chesapeake Railroad Company, which are not intended to be included in this deed. Nor does this deed include, nor is it intended to include, any real estate, warehouses,

wharves or terminal facilities which are now or may hereafter be owned at West Point by The Richmond and Danville Railroad Company.

"Also the right, title and interest of the said party of the first part in and to the Piedmont Railroad, and all the works and other property belonging to the Piedmont Railroad Company and used in connection with said railroad in operating the same, and the leasehold of said railroad and its works, property and franchises for and during the term of eighty-six years from and after the twentieth day of February, eighteen hundred and seventy-four, acquired by deed or lease, executed by the said Piedmont Railroad Company to the said party of the first part, bearing date the fourteenth day of September, eighteen hundred and seventy-four.

"Also the leasehold of the said party of the first part in the North Carolina Railroad, and the property, real and personal, used in connection therewith, and in operating the same, together with all the appurtenances of every sort thereto belonging, which were conveyed to the said party of the first part by the North Carolina Railroad Company by deed bearing date the eleventh day of September, eighteen hundred and seventy-one, and duly recorded in the county of Alamance, in the State of North Carolina.

"Also all the right, title, interest and property of the party of the first part in and to the line of railway extending from Charlotte, in the State of North Carolina, to the City of Atlanta, in the State of Georgia, and the works, property and franchises thereto pertaining held by the said party of the first part under certain agreements contained in a contract made on the twenty-sixth day of March, eighteen hundred and eighty-one, between The Richmond and Danville Railroad Company, party of the first part, and the Atlanta and Charlotte Air-Line Railway Company, party of the second part, whereby the right is secured to the Richmond and Danville Railroad Company to perpetually control, manage and operate the said Atlanta and Charlotte Air-Line Railway, and all the works, property, franchises and income thereof.

"Also all the right, title and interest of the said party of the first part in and to the line of connecting railway, extending from the depot of the party of the first part, in the City of Richmond, to the depot of the Richmond, York River and Chesapeake Railroad Company in said city, not including, however, a certain lot of ground with a brick tenement thereon, belonging to the said party of the first part, situated on Dock street, in the City of Richmond, and known as the Palmer lot, the said lot not being used in connection with the said railway, nor for railroad purposes.

“Also all the leasehold right, title and interest of the said party of the first part in and to the following mentioned and designated properties ; that is to say :

“First. In and to the Virginia Midland Railway and all its branches, leasehold estates and rights, equipment, appurtenances, assets, property and franchises, as the same are leased, assigned and conveyed to the said party of the first part by the said The Virginia Midland Railway Company by an indenture of lease dated and executed the fifteenth day of April, A. D. 1886.

“Second. And in and to the Western North Carolina Railroad, and all its branches, extensions, leasehold estates and rights, equipment, assets, property and franchises as the same are leased, assigned and conveyed to the said party of the first part by the said Western North Carolina Railroad Company by an indenture of lease dated and executed the first day of May, A. D. 1886.

“Third. And in and to the Charlotte, Columbia and Augusta Railroad and all its branches, leasehold estates and rights, equipment, assets, property and franchises, as the same are leased, assigned and conveyed to the said party of the first part by the said Charlotte, Columbia and Augusta Railroad Company by an indenture of lease dated and executed the first day of May, A. D. 1886.

“Fourth. And in and to The Columbia and Greenville Railroad Company and all its branches, leasehold estates and rights, equipment, assets, property and franchises, as the same are leased and conveyed to the said party of the first part by the said The Columbia and Greenville Railroad Company, by an indenture of lease dated and executed the first day of May, A. D. 1886.

“It being fully understood and agreed that each and every of the said four last mentioned leasehold estates of the said party of the first part, and all the right, title, interest, claim or demand, either at law or in equity, vested in the said party of the first part by virtue of each, every and all of the said four several indentures of lease last above mentioned and described, shall *ipso facto*, by these presents, become subject to the lien of this mortgage, and that the said party of the first part shall and will sign, seal, execute and deliver to the said party of the second part, or its successor in the trusts hereinafter expressed and declared, all such other and further transfers, assignments, conveyances or assurances as it shall be advised may be necessary or proper to vest in the said party of the second part, as trustee, as aforesaid, the leasehold rights, titles and interests which are now vested in the said party of the first part by virtue of the said four several indentures of lease last above mentioned and designated.

"Also all, every and any mortgage bonds having priority of lien issued to an amount not exceeding fifteen thousand dollars per mile of any railroad company which now is, or hereafter may be, leased, owned, operated or controlled by the said The Richmond and Danville Railroad Company, that may be deposited as part of the property hereby assigned and conveyed under the terms and conditions of the fourth article of agreement hereinbefore made and contained." The said mortgage also constitutes a lien upon the office building and other property of the Danville Company in the city of Washington and District of Columbia junior and subsequent to the lien of said mortgage of October 5, 1874.

VI. The said mortgage or deed of trust was authorized, made, executed and delivered in all respects in conformity with law, and was duly recorded in the office of the Court of Chancery for the city of Richmond, Virginia, on November 20, 1886, and also in the office of the clerk of the Corporation Court of the city of Manchester, Virginia, on November 20, 1886; in the offices of the clerks of the County Courts of Powhatan and Amelia counties, Virginia, on November 22, 1886; in the offices of the clerks of the County Courts of Nottoway county and Prince Edward county, Virginia, on November 23, 1886; in the office of the clerk of the County Court of Lunenburg county, Virginia, on November 24, 1886; in the offices of the clerks of the County Courts of Charlotte and Halifax counties, Virginia, on the 25th of November, 1886; in the office of the clerk of the Corporation Court of the city of Danville, Virginia, and of the clerk of the County Court of Pittsylvania county, Virginia, on November 26, 1886, and in the office of the clerk of the County Court of Chesterfield county, Virginia, on November 27, 1886; as well as in all the other counties where property affected by said mortgage or deed of trust was situated.

Your orator duly accepted the trust created in and by the said mortgage or deed of trust before the recording of the said mortgage or deed of trust, as aforesaid.

Your orator refers to the said mortgage so recorded, and to a true copy thereof, annexed to this bill of complaint, as a part thereof, marked "Exhibit A," which your orator prays may be taken in all respects as if it had been fully set forth in the body of this bill.

VII. The said Consolidated Mortgage Bonds, to the aggregate amount of eleven million two hundred and twenty thousand dollars, so made and executed, as aforesaid, were delivered by the Danville Company to your

orator, to be by your orator issued and delivered to said Danville Company in the manner and upon the terms provided in and by the first article of said Consolidated Mortgage, to which your orator prays leave to refer.

Of the said eleven million two hundred and twenty thousand dollars of consolidated bonds, your orator has, in accordance with the terms and provisions of said Consolidated Mortgage, issued and delivered to the Danville Company, in exchange for debenture bonds issued under the said mortgage deed of trust, dated February 1, 1882, consolidated mortgage bonds to the aggregate amount of six hundred and thirty-two thousand dollars par value; and in exchange for unpaid coupons appertaining to debenture bonds of said issue, consolidated mortgage bonds to the aggregate amount of seven hundred and nineteen thousand dollars par value, and consolidated mortgage scrip to the amount of one hundred dollars par value. In exchange for said consolidated mortgage bonds, your orator has received, and retains and holds, without cancellation and without any release, relinquishment or impairment of the lien or security of the said mortgage or deed of trust of February 1, 1882, debenture bonds of said issue, to the amount of six hundred and thirty-two thousand dollars par value, and coupons appertaining to debenture bonds, as follows, that is to say: Twenty-three thousand nine hundred and seventy past due and unpaid coupons for the sum of thirty dollars each, amounting in the aggregate to the sum of seven hundred and nineteen thousand one hundred dollars.

VIII. In addition to said eleven million two hundred and twenty thousand dollars of consolidated mortgage bonds, the Danville Company made, executed and delivered to your orator, consolidated mortgage bonds of like form and effect, to the amount of three hundred and fifty thousand dollars par value, and the same have been duly certified by your orator, and issued and delivered to said Danville Company to the amount of three hundred and fifty thousand dollars par value, which sum was equal, at par valuation, to the amount expended by the Danville Company after the date of said consolidated mortgage, in the purchase of new and additional equipment for use on its line of railroad, as provided in and by the third article of said consolidated mortgage.

IX. On or about the 30th day of April, 1888, the Danville Company and your orator duly made and entered into a certain agreement in writing bearing date on said last mentioned day, amendatory of, and supplementary to, said consolidated mortgage, a true copy of which agreement is

annexed to this bill as a part thereof, marked "Exhibit C," and your orator prays that the same may be taken in all respects as if it had been fully set forth in the body of this bill. In and by said agreement it was among other things provided that the provisions of the said consolidated mortgage giving power or authority to issue any bonds thereunder in exchange for the first consolidated mortgage bonds of the Western and North Carolina Railroad Company be revoked and annulled, that the provisions of said consolidated mortgage for the reservation by your orator of bonds issued thereunder be modified so as to restrict said reservation of bonds to the aggregate amount of ten millions seven hundred and twenty thousand dollars instead of eleven millions two hundred and twenty thousand dollars; that the provisions of said consolidated mortgage be so altered and modified as to revoke and annul all power or authority to issue any further or additional bonds for the purchase of equipment in excess of the amount of three hundred and fifty thousand dollars already issued; and that the provisions of said consolidated mortgage should be further modified and changed so as to limit and restrict the total amount of bonds authorized to be issued thereunder for any and every purpose or application to the amount of fourteen millions five hundred thousand dollars in the aggregate, that amount being thereby fixed and determined as a maximum amount of bonds to be issued under such mortgage inclusive of the ten millions seven hundred and twenty thousand dollars of bonds thereinbefore mentioned.

In addition to the eleven millions two hundred and twenty thousand dollars of consolidated mortgage bonds the Danville Company also made, executed and delivered to your orator consolidated mortgage bonds of like form and effect, to the amount of two millions, three hundred and ninety-nine thousand dollars par value. Out of said two millions, three hundred and ninety-nine thousand dollars of consolidated mortgage bonds and five hundred thousand dollars par value of consolidated mortgage bonds, forming part of said eleven millions, two hundred and twenty thousand dollars, your orator has duly certified, issued and delivered to said Danville Company bonds to the amount of two millions, eight hundred and twenty-six thousand dollars par value and consolidated mortgage script to the amount of two hundred dollars par value, upon deposit with your orator of mortgage bonds of divers railroad companies owned, leased, operated or controlled by the Danville Company to an aggregate amount of prior lien or liens not exceeding fifteen thousand dollars per mile of the

mileage of the Company issuing the same. The said mortgage bonds of said owned, leased, operated or controlled railroad companies deposited with your orator upon the certification and delivery of said consolidated mortgage bonds as follows, that is to say :

1. First mortgage bonds of the Elberton Air Line Railway Company, to the amount of one hundred and fifty thousand dollars par value, bearing seven per cent. interest, payable semi-annually.

2. First mortgage bonds of the Lawrenceville Railroad Company to the amount of thirty thousand dollars par value, bearing interest at the rate of seven per cent. per annum, payable semi-annually.

3. First mortgage bonds of the Hartwell Railroad Company to the amount of sixteen thousand two hundred dollars par value, bearing interest at the rate of ten per cent. per annum, payable semi-annually.

4. First mortgage bonds of the Milton and Sutherlin Railroad Company to the amount of twenty-six thousand dollars par value, bearing interest at the rate of eight per cent. per annum, payable semi-annually.

5. First mortgage bonds of the Statesville and Western Railroad Company to the amount of three hundred thousand dollars par value, bearing interest at the rate of six per cent. per annum, payable semi-annually.

6. First mortgage bonds of the Oxford and Henderson Railroad Company to the amount of one hundred and ninety-five thousand dollars par value, bearing interest at the rate of six per cent. per annum, payable semi-annually.

7. First mortgage bonds of the Laurens Railway Company to the amount of one hundred and fifty thousand dollars par value, bearing interest at the rate of six per cent. per annum, payable semi-annually.

8. First mortgage bonds of the High Point, Randelman, Ashboro and Southern Railroad Company to the amount of four hundred and twenty thousand dollars par value, bearing interest at the rate of six per cent. per annum, payable semi-annually.

9. First mortgage bonds of the Yadkin Railroad Company to the amount of six hundred and fifteen thousand dollars par value, bearing interest at the rate of six per cent. per annum, payable semi-annually.

10. First mortgage bonds of the North Carolina Midland Railroad Company to the amount of three hundred and ninety thousand dollars par value, bearing interest at the rate of six per cent. per annum, payable semi-annually.

11. First mortgage bonds of the Danville and Western Railway Company to the amount of five million, fifty-two

thousand dollars par value, bearing interest at the rate of five per cent. per annum, payable semi-annually.

All of said mortgage bonds so deposited with your orator as aforesaid are held and retained by your orator as part of the property assigned and conveyed to your orator by said consolidated mortgage, and subject to all the terms, conditions and trusts therein expressed and declared.

X. On or about the 18th day of November, 1886, the Danville Company made, executed and delivered to your orator an instrument in writing, whereby said Danville Company assigned, transferred, set over, conveyed and confirmed unto your orator, as trustee under the said consolidated mortgage or deed of trust, and in accordance with the provisions of said consolidated mortgage, and for the purposes thereof, the five separate indentures of leases hereinafter mentioned—that is to say:

1. A lease executed April 15, 1886, by the Virginia Midland Railway Company to said Danville Company.

2. A lease executed April 30, 1886, by the Western North Carolina Railroad Company to said Danville Company.

3. A lease executed May 1, 1886, by the Columbia and Greenville Railroad Company to said Danville Company.

4. A lease executed May 1, 1886, by the Charlotte, Columbia and Augusta Railroad Company to said Danville Company.

5. A lease executed October 30, 1886, by the Washington, Ohio and Western Railroad Company to said Danville Company.

A true copy of said last mentioned indentures, dated November 18, 1886 (omitting the copies of said indentures of lease), is annexed to this bill, as a part thereof, marked "Exhibit C," and your orator prays that the same may be taken in all respects as if it had been fully set forth in the body of this bill.

XI. On or about the 30th day of April, 1888, the said Danville Company and your orator duly made and entered into another certain agreement in writing, bearing date on said last mentioned day, amendatory of and supplementary to said consolidated mortgage. A true copy of said last mentioned agreement is annexed to this bill, as a part thereof, marked "Exhibit D," and your orator prays that the same may be taken in all respects as if it had been fully set forth in the body of this bill.

XII. Under and by virtue of the provisions of said consolidated mortgage or deeds of trust, your orator has in

all duly certified, in the form set forth therein, bonds of the issue secured by said consolidated mortgage or deed of trust, to the number of four thousand, five hundred and twenty-seven, amounting in the aggregate to four million, five hundred and twenty-seven thousand dollars of principal and also scrip certificates to the amount of three hundred and fifty dollars of principal, entitling the holders thereof to receive bonds of said issue, when presented in the amount of one thousand dollars, or multiples thereof, and said bonds and scrip have been negotiated and sold to divers persons who thereby became *bona fide* holders thereof, as purchasers of the same for value. The owners and holders of the bonds secured by the said consolidated mortgage or deed of trust are numerous and the names and residences of most of said holders are unknown to your orator.

XIII. In and by the said consolidated mortgage or deed of trust it was, among other things, provided that in case default should be made in the payment of any interest to accrue on any of said consolidated mortgage bonds, when the same should become due and payable, and such accrued interest should remain in arrears for six months after it should have been duly demanded, it should be lawful for your orator, and on the written demand of a majority in interest of the holders of all the said bonds at such time outstanding, it should be the duty of your orator to declare the whole principal of such bonds, with all interest accrued and unpaid thereon, to be due and payable.

The said Danville Company made default in payment, on the first day of October, 1892, of the interest due on that day on all of said consolidated mortgage bonds which have been issued and are now outstanding, as aforesaid, secured by the said consolidated mortgage to your orator, as aforesaid, and also in the payment of the installment of the interest upon all of said bonds which became due and payable on the first day of April, 1893. The said first mentioned default has continued for six months and upwards and still continues.

Your orator is informed and believes that demand was made of the said Danville Company for the payment of the interest coupons upon said consolidated mortgage bonds, which became due and payable on the first day of October, 1892, and the first day of April, 1893, respectively, and payment of the same was refused, and that neither on said first day of October, 1892, nor at any time since did the said Danville Company have, at its agency in the city of New York or elsewhere, any funds with which to pay said coupons or any of them.

payable on October 1, 1892, to-wit : the sum of one hundred and six thousand, four hundred and twenty-five dollars ; and also the amount of the semi-annual installment of interest which became due upon said bonds on the first day of April, 1893, amounting to the further sum of one hundred and six thousand, four hundred and twenty-five dollars, with interest on said respective sums from their respective due dates ; and also the principal of said bonds and scrip issued, as aforesaid, to-wit : the sum of four million, two hundred and fifty-seven thousand three hundred and fifty dollars, with interest thereon from the first day of April, 1893 ; and that no proceedings have been had, at law or in equity, for the collection of said mortgage debt, or any part thereof, save only this suit.

Your orator further shows that the financial affairs of the said Danville Company are in an embarrassed condition, and that your orator, as trustee under the said consolidated mortgage or deed of trust, cannot execute or perform the trusts provided in and by the said mortgage, or protect the rights of the holders of the bonds secured thereby without the aid or interposition of this honorable court sitting in equity, and without a judicial sale of the mortgaged premises and of all franchises, property, premises and appurtenances covered by the said mortgage or deed of trust, and that until such sale can be had and the proceeds thereof distributed, it is expedient and necessary that all the said mortgaged property of every nature and description whatsoever (except the said debenture bonds and coupons, and first mortgage bonds of owned, leased and controlled railroads held by your orator, as hereinbefore set forth) should be placed in the possession and under the control of a receiver or receivers to be appointed by this honorable court, with such proper powers and control over the same as to this court shall seem just.

Your orator, therefore, in view of the premises, seeks the aid of this honorable court in equity, wherein only adequate relief can be administered in matters of this nature, and prays, as follows :

First. That the said consolidated mortgage may be foreclosed.

Second. That the lien of the said bonds and scrip, so issued under said consolidated mortgage, may be decreed and established as a lien upon the railroads and other property hereinbefore mentioned and described, and that the amount due upon the said bonds, scrip and coupons outstanding and secured by said consolidated mortgage may be ascertained and determined.

Third. That, in default of the payment of the sum so found due, within a time to be limited by the decree of this honorable court, it may be decreed that the Richmond and Danville Railroad Company, the defendant, and all persons claiming under it or claiming any interest in the said mortgaged property, as aforesaid, subsequent to the lien of said mortgage, be absolutely barred and foreclosed of and from all right of equity or redemption of, in and to the said mortgaged premises, or any part thereof, and that a sale of the whole of the mortgaged property and premises (including the six hundred and thirty-two debenture bonds and twenty-three thousand, nine hundred and seventy coupons mentioned in Article VII. of this bill of complaint) be ordered in accordance with law and the practice of this honorable court; and that the proceeds may be applied to the payment of the expenses of this suit and of the amounts found due, as aforesaid, and the balance thereof as the court may direct.

Fourth. That a receiver or receivers be appointed to take possession of the property, estate and franchises of the defendant, The Richmond and Danville Railroad Company, and the earnings and proceeds thereof, with power to operate the railroads owned and leased or controlled by it, and with all such powers and authority as may be requisite to preserve said property until the sale thereof, as the same may be decreed and ordered by this honorable court, and to secure the earnings of the said railroads to the use of the bondholders, and with such other powers and authority as are usually vested in receivers in like cases, as this court may direct.

Fifth. That the defendant, the Richmond and Danville Railroad Company, its officers, directors, and all other persons claiming or pretending to claim under them, may be restrained by injunction of this honorable court from interfering with or disposing of said mortgaged premises, property and franchises, or any part or parts thereof, or any earnings or proceeds thereof.

Sixth. That the said defendant herein, the Richmond and Danville Railroad Company, may answer all and singular the premises, but not under oath, which is hereby expressly waived.

Seventh. That your orator may have such other and further relief in the premises as the nature and circumstances of the case may require, and to your honor seem meet.

May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of

this bill to be issued to said Richmond and Danville Railroad Company and its officers, as aforesaid, but also a writ of subpoena to be directed to the Richmond and Danville Railroad Company, commanding it, at a certain time and under a certain penalty to be therein specified, to be and appear before this honorable court, then and there to answer the premises, and to abide by the order and decree of the court herein, and that said corporation may appear herein according to law.

CENTRAL TRUST COMPANY OF NEW YORK,

By E. FRANCIS HYDE,
2nd Vice-President.

{ Seal. }

BUTLER, STILLMAN & HUBBARD,
Solicitors for Complainant.

ADRIAN H. JOLINE,
Of Counsel.

STATE, CITY AND COUNTY OF NEW YORK. } ss:
Southern District of New York, }

E. Francis Hyde, being duly sworn, deposes and says that he is an officer, to-wit, the 2d Vice-President of the Central Trust Company of New York, the complainant in this suit; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

That the seal affixed to the said bill of complaint is the corporate seal of the complainant, and was thereunto affixed by due and proper authority.

E. FRANCIS HYDE.

Sworn to before me this 30th day of June, 1893.

FRANK B. SMIDT,
Notary Public 276,
N. Y. Co.

{ Notarial
Seal. }

rected to take possession on August 1, 1893, of all and singular the property above described wherever situated or found, and continue the operation of said railroad system and steamer lines and conduct systematically in the same manner as at present the business and occupation of common carrier of passengers and freight, and discharge all public duties obligatory upon either the said Richmond and Danville Railroad Company or upon any of the other corporations whose lines of road were formerly in the possession of and operated by said last named company and are now in the possession of and operated by said Huidekoper and Foster as receivers, and said Frederic W. Huidekoper and Rueben Foster, receivers appointed in said suit now pending in this court wherein William P. Clyde and others are plaintiffs and the Richmond and Danville Railroad Company and others are defendants, are hereby required and commanded to turn over and deliver on August 1, 1893, to said receivers appointed under this order all the property now in their possession or under their control as receivers heretofore appointed by this court in said suit brought by William P. Clyde and others, including cash on hand and all accounts and balances.

Each and every of the officers, directors, agents and employees of the said Richmond and Danville Railroad are hereby required and commanded forthwith upon demand of said receivers, or their duly authorized agent, on August 1, 1893, to turn over and deliver to the receivers hereby appointed, or their duly constituted representative, any and all books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys or other property in his or their hands, or under his or their control; and each and every of such directors, officers, agents, and employees are hereby commanded and required to obey and conform to such orders as may be given to them from time to time by the said receivers or their duly constituted representatives in conducting the operation of the said property and in discharging their duties as receivers, and each and every of such officers, directors, agents and employees of the said Richmond and Danville Railroad Company are hereby enjoined from interfering in any way whatever with the possession or management of any part of the property over which the receivers are hereby appointed, or interfering in any way to prevent the discharge of their duties, or operating the same under the court's order.

Said receivers are hereby fully authorized to operate the said system of railways and steamer lines and manage all other property of such corporation at their discretion,

and in such manner as will, in their judgment, produce the most satisfactory results consistent with the discharge of the public duties imposed thereon, and to collect and receive all the income therefrom and all the debts due said company of all kinds, and for such purpose are hereby vested with full power, at their discretion, to employ and discharge and fix the compensation of all such officers, attorneys, managers, superintendents, agents and employees and the proper discharge of their trust, with the approval of one of the judges of this court.

The said receivers are directed to deposit the moneys coming into their hands in some banks in Richmond, Washington and New York City and such other places as to them may seem proper, and report to the court what banks they have so selected.

They are hereby fully authorized and empowered to institute and prosecute all such suits as may be necessary, in their judgment, for the proper protection of the property and trusts hereby vested in them; and to likewise defend all such actions instituted against them as such receivers, and also to appear in and conduct the prosecution or defense of any suits now pending in any court against the said Danville Company, the prosecution or defense of which will, in the judgment of said receivers, be necessary for the proper protection of the property placed in their charge, for the interests and rights of creditors connected therewith.

The said receivers shall, from time to time, out of the funds coming into their hands from the operation of the property and otherwise, pay the expenses of operating the same and executing their trusts and the just debts and liabilities of the present receivers, and all taxes and assessments upon the said property or any part thereof, and also pay and discharge all such traffic and car mileage balances as may be due to connecting and other railways, and all such loss and damage claims arising from the previous operations of the said property as, in their judgment, on examination, are proper to be paid as expenses of operation.

The said receivers are hereby required to open proper books of account, wherein shall be stated the earnings, expenses, receipts and disbursements of their said trust, under this order of appointment, and preserve vouchers for all payments by them made on account thereof, and to file in this court monthly statements of their receipts and disbursements.

The said receiver shall be at liberty, from time to time, to make application to the court for such further order

or direction as to the operation of said property in their charge, or the performance of their duties in connection therewith, as in their judgment may be necessary.

Each of said receivers are hereby further required to file with the clerk of this court a proper bond, with sureties, to be approved by this court, in the penal sum of \$100,000, conditioned for the proper discharge of their duties, and to account for all funds coming into their hands according to the orders of this court.

Nothing in this order contained shall be held to be an election on the part of the court, or its receivers to assume or adopt any of the leases or contracts under which certain lines of railroad came into possession of and were being operated and controlled by the said Richmond and Danville Railroad Company, but the direction for the receivers hereby appointed to take possession of and operate any and all such lines is provisional only, and the receivers are directed to keep separate accounts of the earnings and expenses of all such leased and operated lines and report the same, and the court reserves full power to deal with the custody of such roads hereafter by then electing to adopt or to surrender any or all of such leases, and to order the receivers to tender the said roads to their respective owners.

Nothing in this order contained shall be construed to vacate any of the orders heretofore entered in the case of William P. Clyde and others; but the court reserves full power to act upon the masters' reports filed in the said cause, and in said cause to adjudge and decree upon the rights of creditors ascertaining a claim against the property of the said railroad company or income thereof, in preference to the mortgage debt thereof by orders to be entered in the said suit of William P. Clyde and others, upon notice to parties, with like effect upon the mortgaged property and income as if such orders were entered in this cause.

The present receivers shall have full power to issue and dispose of the balance of the \$1,000,000 receivers' certificates, heretofore ordered by the court by decree dated June 28, 1892.

N. GOFF,
Circuit Judge.

July 17, 1893.

And on another day, to-wit: August 21, 1893, the following order was entered:

ORDER AUTHORIZING PAYMENT OF INSTALMENTS ON CAR TRUSTS AND EQUIPMENT CONTRACTS.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

Central Trust Company of New York }
vs. }
Richmond & Danville Railroad Company. }

Come now the parties, by their respective solicitors, and on motion of the complainant, and by consent, it is ordered, until the further order of the court in the premises, the receivers herein appointed, out of the income coming into their hands from the operation of the roads in their charge, which, in their judgment, can safely be used without prejudice to the payment of their own current obligations, are authorized, exercising their discretion as to the best interests of the trust estate, to pay the instalments hereafter accruing on car trust and equipment contracts, and on all rental obligations assumed by the Richmond and Danville Railroad Company, in any of the leases or operating contracts relating to the roads now being operated by the receivers herein, whether such rental obligations are evidenced by coupons or guaranteed stock dividends, or otherwise.

This order, and the payments thereunder, shall be without prejudice, and shall be construed to be an election on the part of the court or its receivers to accept or be concluded by any such lease or operating contract, but the court reserves full power, at any time, on the application of any party in interest, or of the receivers, on good cause shown, to set aside or modify this order as to the payments of rental on any such leased or operated road.

August 21st, 1893.

N. GOFF,
Circuit Judge.

We consent to the entry of the foregoing order as per force.

HENRY CRAWFORD, Sol. for Deft.

FRANCIS LYNDE STETSON,

Of Counsel for the Reorganization Committee.

BUTLER, STILLMAN & HUBBARD,

Solicitors for Complainant.

And on the same day, to-wit: the 21st day of August, 1893, the following order was entered:

ORDER AUTHORIZING PAYMENT OF INTEREST ON FLOAT- ING DEBT.

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF
VIRGINIA.

Central Trust Company of New York
vs.
Richmond & Danville Railroad Company. }

It is ordered by the court, with consent of parties, that the receivers, out of the income coming into their hands, not necessary to pay the operating expenses of the properties in their charge, or to discharge former orders of this court, be authorized, at their discretion, from time to time, to pay to the various creditors of the Richmond and Danville Railroad Company, holding what is known as the "Floating Debt," or "Bank Loans," in New York and elsewhere, and aggregating about \$3,715,000, the present and past due and accruing interest on said respective debts or loans, both extended and unextended, at the rate of six per cent. per annum.

August 21st, 1893.

N. GOFF,
Circuit Judge.

We consent to entry of this order as proposed.

FRANCIS LYNDE STETSON,
Of Counsel for Reorganization Committee.
BUTLER, STILLMAN & HUBBARD,
Complts Solicitors.

HENRY CRAWFORD,
Sol. for Deft.

And on another day, to-wit : the 27th day of January, 1894, came the receivers and filed a petition, which petition, together with the order thereon, is as follows :

PETITION OF RECEIVERS FOR LEAVE TO PURCHASE STEEL RAILS.

IN THE CIRCUIT COURT OF THE UNITED STATES, EASTERN
DISTRICT OF VIRGINIA.

Central Trust Company
vs.
Richmond and Danville Railroad Company. } In Equity.

Samuel Spencer, F. W. Huidekoper and Reuben Fos-

ter, receivers, respectfully report to the court that, for the proper and economical operation of the lines of railroad of which they are receivers, and for the safety of passengers and property transported over such roads, as required by the order of this court appointing them receivers, two thousand tons of new steel rails are an absolute necessity; and they have negotiated with and purchased from the Carnegie Steel Company, Limited, subject to the approval of the honorable court, said two thousand tons of rails, at a cost of twenty-four dollars per ton, deliverable at the mill.

Your petitioners therefore respectfully request that they be allowed to consummate said purchase, and to pay for the same out of the income of said property.

S. SPENCER,
F. W. HUIDEKOPER,
REUBEN FOSTER.

DISTRICT OF COLUMBIA } ss :

F. W. Huidekoper, being duly sworn, says that he is one of the receivers named in the foregoing petition, and that the matters and things therein set forth are true, as he verily believes,

F. W. HUIDEKOPER.

Sworn to and subscribed before me this sixteenth day of January, A. D. 1894.

{ Notarial }
{ Seal. }

CHAS. P. LEE,
Notary Public.

ORDER ON FOREGOING PETITION.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

Central Trust Company of New York	} In Equity.
<i>versus</i>	
Richmond and Danville Railroad Company.	
	No. 469.

Come now Samuel Spencer, F. W. Huidekoper and Reuben Foster, receivers heretofore appointed in this cause, and present to the court their report and petition, stating the need of two thousand tons of new steel rails to properly operate the railroads in their charge and for the safety of persons and property transported, and asking that con-

tract made with the Carnegie Steel Company, Limited, to furnish these rails at a cost of twenty-four dollars per ton, deliverable at the mill, to be paid out of the income of the property in their charge, be approved by the court.

On consideration whereof, it is ordered by the court that the receivers be, and they are hereby, authorized to enter into contract with the Carnegie Steel Company, Limited, for the two thousand tons of steel rails above referred to at the price named, the same to be paid for out of the income coming into their hands from the operation of the property in their charge.

N. GOFF,
Circuit Judge.

And on the same day, to-wit : the 27th day of January, 1894, came the receivers and filed a petition, which petition, together with the order thereon, is as follows :

**PETITION OF RECEIVERS FOR LEAVE TO PURCHASE
EIGHT LOCOMOTIVES.**

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

Central Trust Company

vs.

Richmond & Danville Railroad Company.

} In Equity.

Samuel Spencer, F. W. Huidekoper and Reuben Foster, receivers, respectfully report to the court that, for the proper and economical operation of the lines of railroad over which they are receivers, and the due prosecution of the freight and passenger business on such roads, as required by the order of this court appointing them as its receivers, eight new locomotives are required for freight and passenger service. They have negotiated and can purchase from the Baldwin Locomotive Works five engines for prompt service at a total cost of \$52,375, payable ten per cent. in cash and the balance in twelve quarterly payments of \$3,928.12½ each, with average interest to be added.

They have also negotiated and can purchase from the Richmond Locomotive Works three engines at a total cost of \$31,275, upon cash and twelve quarterly payments as heretofore stated.

For the deferred payments the respective vendors are willing to accept the promissory notes of the receivers, the title to all such engines to remain in the manufacturers until the full purchase price thereof is paid. Your peti-

tioners verily believe, and therefore report, that it is for the interest of the trust estate in their charge to conclude such arrangement and purchase of said engines, and that the service of the said locomotives will earn sufficient funds to enable the receivers to pay the deferred instalments.

Your receivers, therefore, the premises considered, pray the court to authorize them to complete the purchase of said eight engines on the terms, payments and conditions hereinbefore set out.

SAMUEL SPENCER,
F. W. HUIDEKOPER,
REUBEN FOSTER.

DISTRICT OF COLUMBIA, } ss:

F. W. Huidekoper, being duly sworn, says that he is one of the receivers named in the foregoing petition, and that the matters and things therein set forth are true, as he verily believes.

F. W. HUIDEKOPER.

Sworn to and subscribed before me this twelfth day of January, A. D. 1894.

{ Notarial
Seal. }

CHAS. P. LEF,
Notary Public.

ORDER ON FOREGOING PETITION.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

Central Trust Company of New York	} In Equity.
<i>versus</i>	
Richmond & Danville Railroad Company.	No. 469

Come now Samuel Spencer, F. W. Huidekoper and Reuben Foster, receivers heretofore appointed in this cause, and present so the court their report and petition, stating the need of additional locomotives to operate properly and economically the railroads in their charge, and asking that they be authorized to make contracts with locomotive builders for the purchase of eight (8) locomotives, at an aggregate cost not exceeding eighty-five thousand dollars, to be paid ten per cent. (10%) in cash and the balance, with average interest, in twelve equal quarterly payments extending over a period of thirty-six months.

On consideration whereof, it is ordered by the court that the receivers be and they are hereby authorized to enter into contracts with locomotive builders for the purchase of eight locomotives, to execute the necessary contracts with said builders, paying ten per cent. in cash and the balance, with interest, in twelve quarterly instalments, and to issue their Receivers' Certificates or notes for said deferred payments, secured by lien on the locomotives purchased, or by the retention of title in the sellers till payment in full of such certificates or notes.

N. GOFF,
Circuit Judge.

We consent to the entry of the foregoing order as proposed.

HENRY CRAWFORD,
For Defendant.

F. L. STETSON,
Of Counsel for the Reorganization Committee.

BUTLER, STILLMAN & HUBBARD,
Sols. C. T. Co.

And on another day, to-wit : the 17th day of February, 1894, the following order was entered :

ORDER CONSOLIDATING CAUSES.

Central Trust Company of New York
vs.

Richmond & Danville Railroad Company. }

Wm. P. Clyde and others
vs.

Richmond & Danville Railroad Company and others. }

The motion of the Carnegie Steel Company, Limited, for a consolidation of these causes coming on to be heard, in accordance with the order passed for such hearing on the 12th day of February, 1894, and the counsel for the complainant and defendant in said causes, and for the Carnegie Steel Company, Limited, having been heard and the matter considered, it is by the court, this 17th day of February, 1894, ordered that the said causes be and they are hereby consolidated, under the name of The Central Trust Company of New York and others *vs.* The Richmond and Danville Railroad Company and others, Consolidated Cause; and the motion of the complainant, the Central

Trust Company of New York, for the entry of a final decree in the consolidated cause having also come on to be heard, after hearing counsel, it is ordered that the said motion for a final decree be set for hearing on Saturday, March 3d, 1894, at 10 o'clock A. M., at the United States court-rooms, in the city of Baltimore, Md. ; and that in the meantime, and on or before said last mentioned date M. F. Pleasants and Thomas S. Atkins, special masters heretofore appointed in the cause, make a report to this court of all the persons who have presented claims to them, indicating the name of the person and the amount and general character of each claim, and that the clerk of the court cause public advertisement to be made of the fact that such application will be made, at such time and place, for final decree, such publication to be made for at least one week prior to such hearing in a daily newspaper published in the city of Richmond, and another in the city of Baltimore.

Feb'y 17th, 1894.

N. GOFF,
Circuit Judge.

And on another day, to-wit: 3d March, 1894, the following order was entered:

ORDER FOR SPECIAL MASTERS TO FILE REPORT.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

Central Trust Company of New York and others	} Consolidated Cause.
<i>vs.</i>	
Richmond & Danville Railroad Company and others.	

Come now the parties, by their respective solicitors, and, on motion of the complainants, it is ordered that the Special Masters, Messrs. M. F. Pleasants and Thomas S. Atkins, be, and they are hereby ordered to file a report of the respective claims filed with them, or that may be hereafter filed, under the orders heretofore entered in the case of William P. Clyde and others *versus* the Richmond and Danville Railroad Company, and return with said report all testimony taken by them relating to said claims under such classification as shall be selected by them, on or before April 10th, 1894. It is further ordered that the Special Masters give notice of a day, fixed by them, for a final hearing of the reference made to them by publishing a notice for ten days prior to the day fixed by them for such

hearing, in some daily newspapers published in the cities of Richmond, Va., Baltimore, Md., Greensboro, N. C., and Columbia, S. C.

N. GOFF,
Circuit Judge.

Mar. 3d, 1894.

And on another day, to-wit: On 13th April, 1894, came the receivers and filed a petition, which petition, together with the order thereon, is as follows:

**PETITION OF RECEIVERS FOR LEAVE TO PURCHASE
STEEL RAILS.**

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York	}	No. 469. In Equity. Consolidated Cause.
<i>vs.</i>		
Richmond & Danville Railroad Company.		
William P. Clyde and others		
<i>vs.</i>		
Richmond & Danville Railroad Company		
and others.		

Samuel Spencer, F. W. Huidekoper and Beuben Foster, receivers, respectfully report to the court that for the proper, safe and economical operation of the lines of railroad over which they are receivers, and the proper and safe handling of the freight and passenger business on said roads, as required by the orders of this court appointing them as receivers, that they require at the present time about twenty-five hundred (2,500) tons of steel rails. That they have negotiated and can purchase the same at the rate of twenty-four dollars (\$24) per gross ton, delivered at the mill. That your petitioners verily believe, and therefore report, that it is for the best interests of the trust estate in their charge to conclude such purchase of said twenty-five hundred (2,500) tons of rail.

Your receivers therefore, the premises considered, pray the court to authorize them to complete the said purchase of said rail on the terms hereinabove set forth.

SAMUEL SPENCER,
F. W. HUIDEKOPER,
REUBEN FOSTER,
Receivers of the Richmond & Danville Railroad Company.

DISTRICT OF COLUMBIA. }
 City of Washington. }

F. W. Huidekoper, being duly sworn, says that he is one of the receivers named in the foregoing petition, and that the matters therein set forth are true as he verily believes.

F. W. HUIDEKOPER.

Sworn to and subscribed before me this 12th day of April, A. D. 1894.

{ Notarial
 Seal. }

CHAS. P. LEE,
 Notary Public.

ORDER ON FOREGOING PETITION.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York	} No. 469. In Equity. Consolidated Cause.
<i>vs.</i>	
Richmond & Danville Railroad Company.	
William P. Clyde and others	
<i>vs.</i>	
Richmond & Danville Railroad Company and others.	

Come now Samuel Spencer, F. W. Huidekoper and Reuben Foster, receivers heretofore appointed in this cause, and present to the court their report and petition, stating the need of twenty-five hundred (2,500) tons, or thereabout, of new steel rails to properly operate the railroads in their charge, and for the safety of persons and property transported, and asking that they be authorized to make a contract with some steel company to furnish these rails at a cost of twenty-four dollars (\$24.00) per ton, deliverable at the mill, to be paid out of the income of the property in their charge.

On consideration whereof, it is ordered by the court that the receivers be and are hereby authorized to enter into such a contract for the twenty-five hundred tons of steel rails, above referred to, at the price named, the same to be paid for out of the income coming into their hands from the operation of the property in their charge.

April 13, 1894.

N. GOFF,
 Circuit Judge.

We hereby consent to the entry of the above order.

BUTLER, STILLMAN & HUBBARD,
Solicitors for Central Trust Co.

FRANCIS LYNDE STETSON,
Counsel for Bondholders' Committee.

HENRY CRAWFORD,
Solicitor.

And on another day, to-wit: 10th April, 1894, came the special masters and filed a report, which report is in the words and figures following, to-wit:

REPORT OF SPECIAL MASTERS.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York and others against The Richmond & Danville Railroad Company and others.	}	Consolidated Cause.
---	---	---------------------

OFFICE OF SPECIAL MASTERS.

Richmond, Va., April 10th, 1894.

To the Honorable Judges of said Court:

The order of reference to special masters was entered on the 16th day of August, 1892, in the cause of William P. Clyde and others against the Richmond and Danville Railroad Company and others, directing them to hear evidence and take the necessary accounts, and report to the court the amount and nature of all the indebtedness of the said defendant company, whether secured by mortgage, pledge or other security, upon any portion of the corporate property, and, if so, on what portion, and the names of all creditors holding such demands, and, if possible, their places of residence, and to give notice requiring all parties holding any indebtedness, claims or demands against said Railroad Company, except the holders of bonds secured by recorded mortgage on said property or some part thereof, to file said claims before said special masters on or before the 1st day of December, 1892. Acting under said order, a copy of which is herewith filed, publication was made in the newspapers published in the places therein

named, and for the period therein designated. Certificates thereof are herewith filed.

In accordance with above order the masters have received and filed all claims presented to them, both prior and subsequent to the 1st day of December, 1892, and up to the date of this report.

On the 3rd day of March, 1894, the special masters were ordered to file a report of the claims filed with them, or that may be hereafter filed, under the orders heretofore entered in the cause of William P. Clyde and others against The Richmond and Danville R. R. Co., and return with said report all testimony taken by them relating to said claims, under such classification as shall be selected by them, on or before April 10th, 1894. It was further ordered that the special masters give notice of a day fixed by them for a final hearing of the reference made to them by publishing a notice for ten days prior to the day fixed by them for such hearing in some daily newspapers published in the cities of Richmond, Va., Baltimore, Md., Greensboro, N. C., and Columbia, S. C.

The special masters have complied with said order by giving the notice therein required, and certificates of the publication thereof are herewith filed.

In accordance with the foregoing orders, the special masters have taken evidence and heard argument at various times upon many branches of the matters therein referred to them, and still have pending undetermined, awaiting further testimony and argument, many important claims, the names and amounts of which will be hereafter stated.

The Richmond and Danville Railroad is encumbered by the following mortgages, which will not be displaced or paid off by the sale of the property :

First mortgage, dated October 5th, 1874, of which the Central Trust Company of New York is trustee, and the bonds issued and outstanding thereunder amount to \$5,997,000.

Second mortgage, dated February 1st, 1882, of which the Central Trust Company is trustee, and the bonds issued and outstanding thereunder amount to \$4,000,000.

In addition to the preceding two mortgages, which are the first upon the property, the following equipment mortgages, which are junior and subordinate liens (except upon certain property therein named) to the third mortgage, under which the foreclosure proceedings have been taken, are to remain undisturbed.

First. Mortgage to the Central Trust Company of New

York, as trustee, known as the Equipment Sinking Fund Five Per Cent. Mortgage, dated Sept. 3rd, 1889, securing bonds now outstanding to the amount of \$1,493,000. This mortgage is a special lien upon certain lease warrants, &c.

Second. Mortgage to the Central Trust Company of New York, as trustee, known as the Equipment Sinking Fund Six Per Cent. Mortgage, dated May 1st, 1891, securing bonds outstanding to the amount of \$909,000, constituting a lien prior to the lien of the Consolidated Mortgage upon certain railroad equipment and rolling stock.

The Consolidated Mortgage, dated October 22nd, 1886, under which the proceedings for foreclosure and sale in this cause have been taken, is the only mortgage lien upon the proceeds of the sale of the property, but prior to this is a lien created by the order of the court of June 28, 1892, authorizing the receivers to effect a loan of not exceeding \$1,000,000, and issue their certificates therefor. Under this authority Receivers' Certificates have been issued to the amount of \$960,000, and by order of March 30th, 1894, further issue of about \$20,000 has been directed for the payment of certain claims thereby allowed. After the payment of the costs and expenses of these proceedings these certificates are made by said order a first and paramount lien and charge over all mortgages or other liens upon all and singular the Richmond and Danville Railroad and all its appurtenances, equipment, tools, machinery, supplies and franchises, and also its leasehold estates, operating contracts and rights in, to and upon all the other railroads which are held, operated or controlled by it, being the entire railroad property now held and managed by the receivers in this cause as the Richmond and Danville System, and upon all the future income and earnings of said entire system; and such indebtedness and the Receivers' Certificates evidencing the same are entitled, out of such earnings, or the proceeds of any such sale under foreclosure decree, to priority of payment next after the payment of the operating expenses and other costs of the receivership, and before any claim or demand against said Richmond and Danville Railroad Company.

There have been presented to the masters many claims for what are assumed to be operating expenses of the road, which are strongly urged as entitled to equitable priority of payment after the Receivers' Certificates. These claims, with a few exceptions, are all prior to six months before the appointment of the receivers and the circumstances attending them, and their equities are so various as to ren-

der it impossible for the masters to investigate and pass upon them separately. They have in their hands for further evidential argument some of the largest of the claims of this class, involving a consideration of all the questions which control the decision of all supply claims; among these are the Carnegie Steel Co., Pullman's Palace Car Co., Western Union Telegraph Co. and the Standard Oil Co., which have been but partly heard. Upon the decision of these claims will depend the decision of all the supply claims, and we can therefore make no report at present as to the priority of these claims.

Apart from any right or preference that the claims above referred to may have, the next lien upon the proceeds of the sale of the mortgage property is the Consolidated Mortgage, under which these proceedings have been taken.

That mortgage is dated October 22, 1886, and conveys to the Central Trust Company of New York, as trustee, the following property to secure the payment of the bonds issued thereunder, viz. :

The amount of the principal and interest upon said Consolidated Mortgage Bonds, secured by said mortgage or deed of trust, dated October 22, 1886, which is in default and is now due and payable, is as follows :

Interest due Oct. 1, 1892,	\$ 113,183 75
" " April 1, 1893,	113,183 75
Principal,	4,527,350 00
	<hr/>
Total,	\$4,753,717 50

The next lien upon the property, &c., named in connection with the Receivers' Certificates, issued under order of June 28, 1892, and upon which said certificates are the first lien, and the Consolidated Mortgage, just mentioned, is the second lien (apart from any equitable preferences that may be allowed), is the Receivers' Certificates for what is called the Emergency Loan, issued under order of June 24, 1893, amounting, principal, interest and commissions, to \$615,195.00.

The foregoing are all the liens upon the property of the Richmond and Danville Railroad as a whole. Other Receivers' Certificates have been issued by order of the court on the 9th March, 1893, in favor of Bernard Williams & Co., for the purchase of four locomotives, of which \$28,723.68 remain unpaid, and, by the terms of the order of court, allowing the title to remain in said firm until all instalments are paid; the said sum is a first lien upon the property so purchased.

In like manner, on January 27, 1894, certificates were issued in favor of Bernard Williams & Co. for the purchase of eight locomotives, of which \$51,756.96 remain unpaid. The title to the property remaining in the sellers until payment in full of such certificates. In like manner certificates were authorized to be issued on Jan'y 27, 1894, to the Richmond Locomotive Works for the purchase of three engines, amounting to \$31,275 00, upon which there is a balance due of \$30,590.88, secured by a lien on the locomotives purchased, or by the retention of the title by the sellers until the payment in full of the purchase money.

In addition to the special liens by Receivers' Certificates above named, the Central Trust Company of New York, as trustee, has proved before us the following mortgages made by the defendant company, or by other railroad companies embraced in what is known as the Richmond and Danville System, which are liens upon the roads named, respectively, viz. :

NAME OF MORTGAGOR.	Description of Bonds Secured.	Date of Mortgage.	Amount of Bonds.
Piedmont R. R. Co.	First 6 per cent. Due 1928.	June 20, 1888.	500,000
do.	Second 6 per cent. Due 1928.	June 20, 1888.	500,000
Washington, Ohio & Western R. R. Co.	First 6 per cent. Due 1924.	May 28, 1884.	246,000
North Western North Carolina R. R. Co.	First 6 per cent. Due 1938.	Apr. 2, 1888.	1,471,000
Clarksville & North Carolina R. R. Co.	First 6 per cent. Due 1937.	Nov. 1, 1887.	111,000
Oxford & Clarksville R. R. Co.	First 6 per cent. Due 1937.	Nov. 1, 1887.	744,000
Virginia Midland R'y Co.	General 5 per cent. Due 1936.	Apr. 15, 1886.	4,859,000
Western North Carolina R. R. Co.	1st Consol. 6 per cent. Due 1914.	Sept. 1, 1884.	3,856,000
Charlotte, Columbia & Augusta R. R. Co.	1st Consol. 6 per cent. Due 1933.	Nov. 7, 1883.	500,000
Columbia & Greenville R. R. Co.	First 6 per cent. Due 1916.	Jan. 1, 1881.	2,000,000
Spartanburg, Union & Columbia R. R. Co.	First 5 per cent. Due 1932.	June 7, 1882.	1,000,000
Georgia Pacific R'y Co.	First 6 per cent. Due 1922.	May 6, 1882.	5,662,000
do.	Conso. 2d 5 per cent. Due 1923.	May 1, 1888.	4,998,500
do.	Mtge. Income. Due 1923.	May 1, 1888.	4,997,500
do.	Sk. Fd. Equip. 5 per cent. Due 1904.	July 17, 1889.	1,406,000
do.	Sk. Fd. Equip. 6 per cent. Due 1906.	May 1, 1891.	546,000
North Eastern R. R. Co. of Georgia.	General 6 per cent. Due 1926.	Nov. 1, 1881.	315,000
High Point, Randleman, Ashboro & Southern R. R. Co.	First 6 per cent. Due 1939.	Apr. 16, 1889.	402,000
Asheville & Spartanburg R. R. Co.	First 6 per cent. Due 1925.	Apr. 1, 1885.	500,000
North Carolina Midland R. R. Co.	First 6 per cent. Due 1931.	Apr. 28, 1891.	390,000
Yadkin R. R. Co.	First 6 per cent. Due 1930.	Nov. 7, 1890.	615,000
East Tennessee, Virginia & Georgia R'y Co. and Richmond & Danville R. R. Co.	Cincinnati Extension 5 per cent. Due 1940.	Feb. 1 1890.	6,000,000

There are also judgments in the various States through which the Richmond and Danville System passes, which may be liens upon the property of the company in those States, respectively. So far as we have been able to ascertain, the status of these judgments, and the property on which they are liens, we have stated in "Exhibit A," filed with this report.

"Exhibit A," filed with this report, is a list of all claims filed with us (with exceptions hereafter specified), classified as follows: The left-hand sheet shows the name of the claimant, the character of the claim and the amount of claim filed with us; what is shown by the records of the R. & D. R. R. Co., whether the supplies were used upon the R. & D.; the C. R. R. or the M. & N., and if paid. If the company has no information as to the claim, and it has never been presented to them, it is placed under the heading of "No record." Where offsets are claimed by the company, they are stated in the column bearing that designation.

The right-hand sheet, under "Class A" of "R. & D. allowed," shows all the claims for what are known as labor and supply claims, or operating expenses, used upon the R. & D. proper, and Class D, on the same, comprises all other claims. This statement also applies to the claims for supplies used upon the Central R. R. of Georgia, which are put under the heading of the "R. & D. operating C. R. R. allowed." All claims for supplies, &c., used upon the Macon & Northern R. R. are placed by us under the heading of "R. & D. operating M. & N. allowed."

The column marked "Unascertained" comprises the difference in claims as presented to us and to the defendant company, and which are not yet explained.

The column marked "Disallowed" contains the amounts disallowed, as heretofore paid, as interest charges, settlements of judgments, and for other causes appearing upon the face of the record.

The claims upon this report aggregate as follows:

Class "A" upon the Richmond & Danville R. R. amount to,	\$ 67,985 64
Class "D" upon the Richmond & Danville R. R. amount to,	282,837 23
Class "A" upon the C. R. R. of Georgia amount to,	114,398 72
Class "D" upon the C. R. R. of Georgia amount to,	84,190 73
Claims upon the M. & N., amount to	1,385 39
Unascertained, amount to	29,296 32

A large number of claims filed with us do not appear on this report, viz. :

First. Claims of railroad companies for traffic balances due connecting lines. These are omitted because the balances between the claimant companies and the Richmond and Danville Company are changing daily by constant partial settlements. The balance, as appears by the claims as at present filed with us, is largely in favor of the Richmond and Danville Company. All the claims, however, against that company are herewith filed, and marked "Exhibit B," amounting to \$87,144 26. The Richmond and Danville R. R. Co. has claims against connecting lines for traffic balancer for \$213,270.46.

Second. Claims for taxes due in the States of Alabama and Georgia, which appear in "Exhibit C," filed herewith. These taxes are no doubt liens upon the property assessed which belongs to the Central R. R. & Banking Company of Georgia. They amount to \$20,883.26.

In addition to the claims not named above as not embraced in "Exhibit A," the following are not reported therein, for the reason that in several of them the evidence desired to be filed by the claimants has not yet been furnished to us, and, while arguments have been heard against them, counsel for them have not yet been heard, and for the further reason that it is believed by the masters that a decision of one will be a decision of them all. These claims, with the amounts involved, are as follows :

Carnegie & Co.,	\$ 125,067 39
Carnegie, Phipps & Co.,	1,494 49
Western Union Telegraph Co.,	24,142 70
Pullman's Palace Car Co.,	104,718 78
Sloss Iron & Steel Co.,	18,617 78
Virginia & Alabama Coal Co.,	32,502 64
Yazoo & Mississippi Valley R. R.,	24,741 12
Macon & Northern R. R.,	2,200,000 00
London Assurance Corporation,	1,645 53
T. F. Humphreys,	12,224 26
John Hunter, Ex'er,	14,000 00
Wm. J. Robertson,	1,000 00
Kate M. Perkins, Adm'x,	3,000 00
City of Troy,	65,000 00
Wm. H. Marbury,	3,337 50

The masters beg leave to say that if they were furnished with an inventory of all the property of the Richmond and Danville System in all of the States through which the system passes, it would be easy to determine the local liens, if any, upon the property in the several States. In the absence of such information the determination of these liens is impossible.

In conclusion, the masters respectfully submit this, their report, with the statement that since the order directing it to be made on the 10th of April, they have been engaged daily in taking testimony, much of which has not yet been read, and arguments upon the various matters referred to them, leaving but a single day in which to make their report.

Very respectfully,

M. F. PLEASANTS,
THOS. S. ATKINS,
Special Masters in Chancery.

And on another day, to-wit: the 13th day of April, 1894, the following decree was entered:

DECREE OF FORECLOSURE AND SALE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York	}	Consolidated Cause. In Equity. No. 469.
and others, Complainants,		
against		
The Richmond and Danville Railroad	}	
Company and others, Defendants.		

This cause came on to be heard at this term upon the bill of complaint of the Central Trust Company, and exhibits and the answer of the defendant thereto, the report of Thomas S. Atkins and M. F. Pleasants, special masters, and upon the several orders, papers and proceedings in the cause, and upon the proofs submitted by the parties, and was argued by counsel; and, thereupon, the court being fully advised in the premises, upon motion of the complainant, Central Trust Company of New York, by its solicitors, it is ordered, adjudged and decreed as follows, to-wit:

I. The court finds that the material allegations of the bill of complaint of the complainant, Central Trust Company of New York, are true.

II. That the Richmond & Danville Railroad Company (hereinafter styled the Danville Company) was created and organized under the laws of the State of Virginia, on or about the 9th day of March, 1847, and by its original charter and the several acts of the General Assembly of said State of Virginia, amendatory thereof and supplementary thereto, it was, at the times hereinafter mentioned, authorized to locate, construct and operate a line of railway between Richmond and Danville, Virginia, and to acquire the control of other railroads and transportation lines both in the State of Virginia and elsewhere, by a purchase or lease of such properties, and to purchase and hold, or to guarantee the bonds or stocks thereof, and operate and manage all such lines of railway and enjoy the income thereof.

III. That on or about the 5th day of October, 1874, The Danville Company, in accordance with law, made, executed, acknowledged and delivered to Isaac Davenport, Jr., and George B. Roberts, as trustees, its certain mortgage or deed of trust of that date, whereby it conveyed to said trustees the main, branch and certain leased lines of railroad, real and personal property, rights, interests and estates therein

described, to secure the payment of the principal and interest of its coupon bonds, dated October 5, 1874, and payable in gold coin January 1, 1915, to an aggregate amount not exceeding \$6,000,000, with interest at the rate of six per cent. per annum, payable semi-annually, and all of said bonds were issued for value, and are now outstanding. That thereafter, and prior to the commencement of this suit, the Central Trust Company of New York was duly substituted and appointed sole trustee in place and stead of said Davenport and Roberts under said last-mentioned mortgage and deed of trust, and it is now sole trustee of and under the same. The said mortgage was duly recorded in the several places wherein by law it was entitled to be recorded, and constitutes a first lien upon the property described therein and conveyed thereby.

IV. That on February 1, 1882, The Danville Company executed and delivered to the complainant, The Central Trust Company of New York, as trustee, its certain mortgage or deed of trust of that date, conveying to the complainant the main line of railroad, branches and certain described leased lines of railroad, real and personal property, rights, interests and estates therein described, to secure the principal and interest of its debenture bonds, dated February 1, 1882, and payable forty-five years after said date, to the aggregate amount of \$4,000,000, with interest at not exceeding the rate of six per centum per annum, payable out of the net earnings of the company in the manner provided in said deed of trust, and all of said bonds were issued for value, and are now outstanding. Said mortgage was duly recorded in the several places wherein by law it was entitled to be recorded, and constitutes a lien upon the property described therein and conveyed thereby, second only to the lien of said mortgage of October 5, 1874, as to property conveyed by last-mentioned mortgage.

V. That by virtue of its charter powers the Danville Company acquired, prior to October 22d, 1886, large interests in the bonds and stocks of railroads in North Carolina and other States, forming a part of its leased, owned and operated system of railroads, and became liable, as guarantor of the first mortgage bonds of the Northwestern North Carolina Railroad Company, issued under a mortgage deed of trust to H. H. Marshall and E. A. Barber, trustees, dated October 24th, 1872, to the amount of \$500,000.

VI. That on or about the 21st day of October, 1886, the Board of Directors of the Danville Company, in the lawful exercise of their powers, at a meeting duly held at the office of

said company on said last mentioned day, determined to issue coupon bonds of said company, to be denominated Consolidated Mortgage Gold Bonds, each for the sum of one thousand dollars, or two hundred pounds, dated the first day of October, 1886, signed by the President and countersigned by the Secretary, with the corporate seal affixed, and payable fifty years after date in gold coin of the United States of America, or sterling money of Great Britain, with interest at not exceeding five per centum per annum, payable semi-annually on April 1st and October 1st on each and every year, and with privilege of registration at the option of the holder, and that to secure the payment of the principal and interest thereof, the President was authorized and directed to duly execute, acknowledge and deliver in the name of said Danville Company and under its corporate seal, a mortgage deed of trust to complainant, as trustee for the holders of said bonds, conveying all its main line of railroad and all its branch and leased lines, real and personal property, rights, interests and estate of the Danville Company, as hereinafter more fully mentioned and described.

That at the same meeting the said Board of Directors further determined that the Consolidated Mortgage Gold Bonds should be limited to an issue of eleven million, two hundred and twenty thousand dollars of bonds to be reserved and retained by complainant for the sole purpose of taking up, refunding, exchanging or providing for the payment of the above recited bonded indebtedness and liability of the said six million dollars of six per cent. gold bonds, and of the said four million dollars of debenture bonds and unpaid interest thereon, and of the said five hundred thousand dollars of first mortgage guaranteed Northwestern North Carolina Railroad Company Bonds, and thereafter to an amount of bonds not to exceed the sum of fifteen thousand dollars per mile of railroads then or thereafter to be owned, leased, operated or controlled by the said Danville Company, bearing such rate of interest, not to exceed five per centum per annum, as the Board of Directors might determine, such consolidated bonds to be issued from time to time in the corresponding amounts to and only as and when mortgage bonds of any such railroads having priority of lien, and issued at a rate not to exceed fifteen thousand dollars per mile, should be deposited with the complainant as part of the property and security pledged, conveyed and covered by and subject to all the terms, conditions and provisions of said mortgage or deed of trust, whereby the said Consolidated Mortgage Gold Bonds were to be secured, and in addition thereto bonds to the amount of twenty-five hundred

dollars per mile of such mileage might be issued for the purpose of purchasing equipment, and not otherwise.

That on or about the 22d day of October, 1886, in the lawful exercise of its corporate powers to that end, the Danville Company did, in pursuance of such resolutions of said Board of Directors, make and execute its Consolidated Mortgage Gold Bonds, to-wit., eleven thousand two hundred and twenty bonds, bearing date the first day of October, 1886, by each of which bonds the Danville Company, for value received, acknowledged itself indebted to, and promised to pay to the complainant, or bearer, the sum of one thousand dollars in gold coin of the then existing standard of weight and fineness of the United States of America, payable at the financial agency of said Danville Company, in the City of New York, on the first day of October, A. D. 1936, with interest thereon in like gold coin, at the rate of five per centum per annum, payable semi-annually on the first days of April and October in each and every year on the presentation and surrender at such agency of the proper interest coupon attached to said bonds.

That on or about the 22d day of October, 1886, the said Danville Company, in the due exercise of its corporate power thereto in that behalf by it possessed, and being thereunto duly authorized by the vote of its Board of Directors did, in due accordance with the law, for the purpose of securing the payment of said bonds and the coupons thereon, as well as of all bonds, and the coupons appertaining thereto, which might thereafter be issued under and in accordance with the terms and provisions of said mortgage or deed of trust, without preference or priority, and equally and ratably, make, acknowledge, execute and deliver to the complainant, as trustee, as hereinafter recited, its certain mortgage or deed of trust bearing date on said 22d day of October, 1886, whereby it granted, bargained, sold, said conveyed, assigned, transferred and set over unto said complainant and its successor or successors in trust therein and thereby created, and its and their assigns, the following described real and personal property by the following description—that is to say (the words “said party of the first part” used in said description referring to and meaning The Richmond and Danville Railroad Company):

“All and singular the entire railway of The Richmond and Danville Railroad Company, extending from and including the depot lot in the City of Richmond to the town of Danville, in the State of Virginia, and all its lateral road or branches, with all the lands attached and belonging to said railway and branches, and used in connection therewith, including all depot lots, depots, wharves, docks, ware-

houses, machine-shops, bridges and all other structures and their appurtenances, together with all the Company's engines, cars, rolling-stock, equipment, machinery, implements and materials, whether the said cars, engines and rolling-stock are now used upon the Richmond and Danville Railroad, or any of its leased lines, or any of its connecting lines, and all other property, works and effects of the said The Richmond and Danville Railroad Company appertaining to or used in connection with the said railway and branches or in operating the same, wherever the same may be situated, or in whatever manner the same may be held, except the branch road extending from the main line of The Richmond and Danville Railroad, in the City of Manchester, to a point on the James River opposite to that part of the City of Richmond called Rocketts, and except the real estate, wharves, warehouses, and terminal facilities owned by The Richmond and Danville Railroad Company on or near the James River opposite to Rocketts, which are not intended to be included in this deed.

"Also all property and effects so pertaining to and to be used in connection with said railway and in operating the same which the said Company may hereafter at any time acquire.

"Also the corporate rights, privileges, and franchises of said Company of every kinds now owned or which may hereafter be acquired.

"Also the leasehold and all the rights acquired by The Richmond and Danville Railroad Company in and to the Richmond, York River and Chesapeake Railroad by a certain contract made on the ninth day of July, eighteen hundred and eighty-one, between the said Richmond, York River and Chesapeake Railroad Company and the said The Richmond and Danville Railroad Company, except the interest acquired by The Richmond and Danville Railroad Company under the said contract in the stock of the Baltimore, Chesapeake and Richmond Steamboat Company, and in the real estate, warehouses, wharves and terminal facilities at West Point owned by the Richmond, York River and Chesapeake Railroad Company, which are not intended to be included in this deed. Nor does this deed include, nor is it intended to include, any real estate, warehouses, wharves or terminal facilities which are now or may hereafter be owned at West Point by The Richmond and Danville Railroad Company.

"Also the right, title and interest of the said party of the first part in and to the Piedmont Railroad, and all the works and other property belonging to the Piedmont Rail-

road Company and used in connection with said railroad in operating the same, and the leasehold of said railroad and its works, property and franchises for and during the term of eighty-six years from and after the twentieth day of February, eighteen hundred and seventy-four, acquired by deed or lease, executed by the said Piedmont Railroad Company to the said party of the first part, bearing date the fourteenth day of September, eighteen hundred and seventy-four.

"Also the leasehold of the said party of the first part in the North Carolina Railroad, and the property, real and personal, used in connection therewith, and in operating the same, together with all the appurtenances of every sort thereto belonging, which were conveyed to the said party of the first part by the North Carolina Railroad Company by deed bearing date the eleventh day of September, eighteen hundred and seventy-one, and duly recorded in the county of Alamance, in the State of North Carolina.

"Also all the right, title, interest and property of the party of the first part in and to the line of railway extending from Charlotte, in the State of North Carolina, to the City of Atlanta, in the State of Georgia, and the works, property and franchises thereto pertaining held by the said party of the first part under certain agreements contained in a contract made on the twenty-sixth day of March, eighteen hundred and eighty-one, between The Richmond and Danville Railroad Company, party of the first part, and the Atlanta and Charlotte Air-Line Railway Company, party of the second part, whereby the right is secured to the Richmond and Danville Railroad Company to perpetually control, manage and operate the said Atlanta and Charlotte Air-Line Railway, and all the works, property, franchises and income thereof.

"Also all the right, title and interest of the said party of the first part in and to the line of connecting railway, extending from the depot of the party of the first part, in the City of Richmond, to the depot of the Richmond, York River and Chesapeake Railroad Company in said city, not including, however, a certain lot of ground with a brick tenement thereon, belonging to the said party of the first part, situated on Dock street, in the City of Richmond, and known as the Palmer lot, the said lot not being used in connection with the said railway, nor for railroad purposes.

"Also all the leasehold right, title and interest of the said party of the first part in and to the following mentioned and designated properties; that is to say:

"First. In and to The Virginia Midland Railway and all its branches, leasehold estates and rights, equipment,

appurtenances, assets, property and franchises, as the same are leased, assigned and conveyed to the said party of the first part by the said The Virginia Midland Railway Company by an indenture of lease dated and executed the fifteenth day of April, A. D. 1886.

"Second. And in and to the Western North Carolina Railroad, and all its branches, extensions, leasehold estates and rights, equipment, assets, property and franchises as the same are leased, assigned and conveyed to the said party of the first part by the said Western North Carolina Railroad Company by an indenture of lease dated and executed the first day of May, A. D. 1886.

"Third. And in and to the Charlotte, Columbia and Augusta Railroad and all its branches, leasehold estates and rights, equipment, assets, property and franchises, as the same are leased, assigned and conveyed to the said party of the first part by the said Charlotte, Columbia and Augusta Railroad Company by an indenture of lease dated and executed the first day of May, A. D. 1886.

"Fourth. And in and to The Columbia and Greenville Railroad Company and all its branches, leasehold estates and rights, equipment, assets, property and franchises, as the same are leased and conveyed to the said party of the first part by the said The Columbia and Greenville Railroad Company, by an indenture of lease dated and executed the first day of May, A. D. 1886.

"It being fully understood and agreed that each and every of the said four last mentioned leasehold estates of the said party of the first part, and all the right, title, interest, claim or demand, either at law or in equity, vested in the said party of the first part by virtue of each, every and all of the said four several indentures of lease last above mentioned and described, shall *ipso facto*, by these presents, become subject to the lien of this mortgage, and that the said party of the first part shall and will sign, seal, execute and deliver to the said party of the second part, or its successor in the trusts hereinafter expressed and declared, all such other and further transfers, assignments, conveyances or assurances as it shall be advised may be necessary or proper to vest in the said party of the second part, as trustee, as aforesaid, the leasehold rights, titles and interests which are now vested in the said party of the first part by virtue of the said four several indentures of lease last above mentioned and designated.

"Also all, every and any mortgage bonds having priority of lien issued to an amount not exceeding fifteen thousand dollars per mile of any railroad company which now is, or hereafter may be, leased, owned, operated or controlled

by the said The Richmond and Danville Railroad Company, that may be deposited as part of the property hereby assigned and conveyed under the terms and conditions of the fourth article of agreement hereinbefore made and contained."

VII. That the said mortgage or deed of trust was authorized, made, acknowledged, executed and delivered in all respects in conformity with law, and was duly recorded in the office of the Court of Chancery for the city of Richmond, Virginia, on November 20, 1886, and also in the office of the clerk of the Corporation Court of the city of Manchester, Virginia, on November 20, 1886; in the offices of the clerks of the County Courts of Powhatan and Amelia counties, Virginia, on November 22, 1886; in the offices of the clerks of the County Courts of Nottoway county and Prince Edward county, Virginia, on November 23, 1886; in the office of the clerk of the County Court of Lunenburg county, Virginia, on November 24, 1886; in the offices of the clerks of the County Courts of Charlotte and Halifax counties, Virginia, on the 25th of November, 1886; in the office of the clerk of the Corporation Court of the city of Danville, Virginia, and of the clerk of the County Court of Pittsylvania county, Virginia, on November 26, 1886, and in the office of the clerk of the County Court of Chesterfield county, Virginia, on November 27, 1886; as well as in all the other counties where property affected by said mortgage or deed of trust was situated.

VIII. That the said Consolidated Mortgage Bonds, to the aggregate amount of eleven million two hundred and twenty thousand dollars, so made and executed, as aforesaid, were delivered by the Danville Company to complainant, to be by complainant issued and delivered to said Danville Company in the manner and upon the terms provided in and by the said consolidated mortgage.

That, of the said eleven million, two hundred and twenty thousand dollars of consolidated bonds, the complainant has in accordance with the terms and provisions of said Consolidated Mortgage, issued and delivered to the Danville Company, in exchange for debenture bonds issued under the said mortgage deed of trust, dated February 1, 1882, consolidated mortgage bonds to the aggregate amount of six hundred and thirty-two thousand dollars par value; and in exchange for unpaid coupons appertaining to debenture bonds of said issue, consolidated mortgage bonds to the aggregate amount of seven hundred and nineteen thousand dollars par value, and consolidated mortgage scrip to the amount of one hundred dollars par value. That pursuant

to an agreement dated April 30, 1888, supplementary to said consolidated mortgage, complainant has received in exchange for consolidated mortgage bonds, and retains and holds, without cancellation and without any release, relinquishment or impairment of the lien or security of the said mortgage or deed of trust of February 1, 1882, debenture bonds of said issue, to the amount of six hundred and thirty-two thousand dollars par value, and coupons appertaining to debenture bonds, as follows, that is to say: Twenty-three thousand, nine hundred and seventy past due and unpaid coupons for the sum of thirty dollars each, amounting in the aggregate to the sum of seven hundred and nineteen thousand one hundred dollars.

IX. That in addition to said eleven million two hundred and twenty thousand dollars of consolidated mortgage bonds, the Danville Company made, executed and delivered to complainant consolidated mortgage bonds of like form and effect, to the amount of three hundred and fifty thousand dollars par value, and the same have been duly certified by complainant, and issued and delivered to said Danville Company to the amount of three hundred and fifty thousand dollars par value, which sum was equal, at par valuation, to the amount expended by the Danville Company after the date of said consolidated mortgage, in the purchase of new and additional equipment for use on its line of railroad, as provided in and by the third article of said consolidated mortgage.

X. That on or about the 30th day of April, 1888, the Danville Company and complainant duly made and entered into a certain agreement in writing bearing date on said last mentioned day, amendatory of, and supplementary to said consolidated mortgage, and in and by said agreement it was, among other things, provided that the provisions of the said consolidated mortgage giving power or authority to issue any bonds thereunder in exchange for the first consolidated mortgage bonds of the Western and North Carolina Railroad Company be revoked and annulled, that the provisions of said consolidated mortgage for the reservation by complainant of bonds issued thereunder be modified so as to restrict said reservation of bonds to the aggregate amount of ten millions, seven hundred and twenty thousand dollars instead of eleven millions, two hundred and twenty thousand dollars; that the provisions of said consolidated mortgage be so altered and modified as to revoke and annul all power or authority to issue any further or additional bonds for the purchase of equipment in excess of the amount of three hundred and fifty thousand dollars already issued; and

that the provisions of said consolidated mortgage should be further modified and changed so as to limit and restrict the total amount of bonds authorized to be issued thereunder for any and every purpose or application to the amount of fourteen millions, five hundred thousand dollars in the aggregate, that amount being thereby fixed and determined as a maximum amount of bonds to be issued under such mortgage inclusive of the ten millions, seven hundred and twenty thousand dollars of bonds thereinbefore mentioned.

That in addition to the eleven millions two hundred and twenty thousand dollars of consolidated mortgage bonds the Danville Company also made, executed and delivered to complainant consolidated mortgage bonds of like form and effect, to the amount of two millions, three hundred and ninety-nine thousand dollars par value. That out of said two millions, three hundred and ninety-nine thousand dollars of consolidated mortgage bonds and five hundred thousand dollars par value of consolidated mortgage bonds, forming part of said eleven millions, two hundred and twenty thousand dollars, complainant duly certified, issued and delivered to said Danville Company bonds to the amount of two millions, eight hundred and twenty-six thousand dollars par value and consolidated mortgage script to the amount of two hundred dollars par value, upon deposit with complainant of mortgage bonds of divers railroad companies owned, leased, operated or controlled by the Danville Company to an aggregate amount of prior lien or liens not exceeding fifteen thousand dollars per mile of the mileage of the Company issuing the same. That the said mortgage bonds of said owned, leased, operated or controlled railroad companies deposited with complainant upon the certification and delivery of said consolidated mortgage bonds are as follows, that is to say:

1. First mortgage bonds of the Elberton Air Line Railway Company, to the amount of one hundred and fifty thousand dollars par value, bearing seven per cent. interest, payable semi-annually.

2. First mortgage bonds of the Lawrenceville Railroad Company to the amount of thirty thousand dollars par value, bearing interest at the rate of seven per cent. per annum, payable semi-annually.

3. First mortgage bonds of the Hartwell Railroad Company to the amount of sixteen thousand two hundred dollars par value, bearing interest at the rate of ten per cent. per annum, payable semi-annually.

4. First mortgage bonds of the Milton and Sutherlin Railroad Company to the amount of twenty-six thousand

dollars par value, bearing interest at the rate of eight per cent. per annum, payable semi-annually.

5. First mortgage bonds of the Statesville and Western Railroad Company to the amount of three hundred thousand dollars par value, bearing interest at the rate of six per cent. per annum, payable semi-annually.

6. First mortgage bonds of the Oxford and Henderson Railroad Company to the amount of one hundred and ninety-five thousand dollars par value, bearing interest at the rate of six per cent. per annum, payable semi-annually.

7. First mortgage bonds of the Laurens Railway Company to the amount of one hundred and fifty thousand dollars par value, bearing interest at the rate of six per cent. per annum, payable semi-annually.

8. First mortgage bonds of the High Point, Randelman, Ashboro and Southern Railroad Company to the amount of four hundred and twenty thousand dollars par value, bearing interest at the rate of six per cent. per annum, payable semi-annually.

9. First mortgage bonds of the Yadkin Railroad Company to the amount of six hundred and fifteen thousand dollars par value, bearing interest at the rate of six per cent. per annum, payable semi-annually.

10. First mortgage bonds of the North Carolina Midland Railroad Company to the amount of three hundred and ninety thousand dollars par value, bearing interest at the rate of six per cent. per annum, payable semi-annually.

11. First mortgage bonds of the Danville and Western Railway Company to the amount of five hundred and fifty-two thousand dollars par value, bearing interest at the rate of five per cent. per annum, payable semi-annually.

That all of said mortgage bonds so deposited with complainant as aforesaid are held and retained by complainant as part of the property assigned and conveyed to complainant by said consolidated mortgage, and subject to all the terms, conditions and trusts therein expressed and declared.

XI. That on or about the 18th day of November, 1886, the Danville Company made, executed and delivered to complainant an instrument in writing, whereby said Danville Company assigned, transferred, set over, conveyed and confirmed unto complainant, as trustee under the said consolidated mortgage or deed of trust, and in accordance with the provisions of said consolidated mortgage, and for the purposes thereof, the five separate indentures of leases hereinafter mentioned—that is to say:

1. A lease executed April 15, 1886, by the Virginia Midland Railway Company to said Danville Company.

2. A lease executed April 30, 1886, by the Western North Carolina Railroad Company to said Danville Company.

3. A lease executed May 1, 1886, by the Columbia and Greenville Railroad Company to said Danville Company.

4. A lease executed May 1, 1886, by the Charlotte, Columbia and Augusta Railroad Company to said Danville Company.

5. A lease executed October 30, 1886, by the Washington, Ohio and Western Railroad Company to said Danville Company.

XII. That under and by virtue of the provisions of said consolidated mortgage or deed of trust, complainant in all duly certified, in the form set forth therein, bonds of the issue secured by said consolidated mortgage or deed of trust, to the number of four thousand, five hundred and twenty-seven, amounting in the aggregate to four million, five hundred and twenty-seven thousand dollars of principal and also scrip certificates to the amount of three hundred and fifty dollars of principal, entitling the holders thereof to receive bonds of said issue, when presented in the amount of one thousand dollars, or multiples thereof, and said bonds and scrip were negotiated and sold to divers persons who thereby became *bona fide* holders thereof, as purchasers of the same for value; that all such bonds and coupons are now outstanding, and are entitled to the security of said consolidated mortgage.

XIII. That the said Danville Company made default in payment, on the first day of October, 1892, of the interest due on that day on all of said consolidated mortgage bonds which had been issued and are now outstanding, as aforesaid, secured by the said consolidated mortgage to complainant, as aforesaid, and also in the payment of the installment of the interest upon all of said bonds which became due and payable on the first day of April, 1893. That the said first mentioned default had, at the time of filing the bill in this suit, continued for six months and upwards, and still continues.

That demand was made of the said Danville Company for the payment of the interest coupons upon said consolidated mortgage bonds, which became due and payable on the first day of October, 1892, and the first day of April, 1893, respectively, and payment of the same was refused, and that neither on said first day of October, 1892, nor at any time since, did the said Danville Company have, at its agency in the city of New York or elsewhere, any funds with which to pay said coupons or any of them, and before

such dates publicly announced that such coupons would not be paid.

XIV. That more than six months after said first mentioned default in the payment of interest on said consolidated mortgage bonds had occurred, to-wit, more than six months after October 1, 1892, and such interest having remained in arrears for more than six months after it matured and was duly demanded, a majority in interest of the holders of all of the said consolidated bonds outstanding on the 29th day of June, 1893, made a written demand upon complainant, as trustee under said consolidated mortgage, to declare the whole principal of such consolidated bonds with all interest accrued and unpaid thereon to be at once due and payable, and also made a written request to complainant to proceed to enforce the security of said consolidated mortgage, and thereupon, to-wit: on the 30th day of June, 1893, complainant, in accordance with the provisions of such mortgage, made declaration that the whole principal of such bonds, with all interest accrued and unpaid thereon, was forthwith due and payable, and gave due notice in writing thereof and of said written demand of said bondholders to the said Danville Company.

XV. That after the making, execution and delivery of the said consolidated mortgage the Danville Company purchased and acquired lands and real property situate in the District of Columbia, upon which it has erected office buildings, depots, stations and freight houses, and it has laid tracks upon said lands or a portion thereof, all of which lands, buildings and tracks have ever since been and are now used and occupied in connection with the railway system owned and operated by said Danville Company, and they constitute an integral and necessary part thereof.

That subsequent to the making, execution and recording of said consolidated mortgage the Danville Company made, executed and delivered to the complainant, Central Trust Company of New York, as Trustee, a mortgage known at the Equipment Sinking Fund Five Per Cent. Mortgage, dated September 3, 1889, securing bonds now outstanding to the amount of, to-wit: \$1,493,000, which is a lien upon the property covered by said consolidated mortgage junior and subordinate to the lien of said consolidated mortgage, except as to certain lease warrants, car-trust certificates, obligations and securities based upon and secured by certain railroad equipment and rolling stock described in certain car-trust leases and contracts recited in said Equipment Five Per Cent. Mortgage.

That subsequent to the making, execution and recording of said consolidated mortgage, the Danville Company made, executed and delivered to the complainant, Central Trust Company of New York, as Trustee, a mortgage known as the Equipment Sinking Fund Six Per Cent. Mortgage, dated May 1, 1891, securing bonds now outstanding and constituting a lien prior to the lien of the consolidated mortgage upon railroad equipment and rolling stock which might be purchased by said trustee by means of the bonds or the proceeds of bonds issued under said last mentioned equipment mortgage.

XVI. That the amount of the principal and interest upon said consolidated mortgage bonds, secured by said mortgage or deed of trust, dated October 22, 1886, which is in default, and is now due and payable, is as followss :

Interest due October 1, 1892,	\$113,183 75
Interest thereon to the date of this decree,	8,677 41
Interest due April 1, 1893,	113,183 75
Interest thereon to the date of this decree,	5,847 82
Principal,	4,527,350 00
Interest thereon from April 1, 1893, to the date of this decree,	233,913 08
	<hr/>
	\$5,002,155 81

It is therefore considered, adjudged and decreed :

1. That the lien of the said bonds, coupons and scrip issued under and secured by the consolidated mortgage of the Danville Company, dated October 22, 1886, is a valid lien upon the railroads and other property, hereinbefore mentioned and described, prior and superior to any other lien or incumbrance, except the lien of the mortgages of October 5, 1874, and February 1, 1882, in respect to the properties specifically mentioned and described in, and covered by, said last mentioned mortgages respectively, and except the claim made by the administrators *c. t. a.* of Kate M. Perkins, deceased, to a bond for three thousand dollars secured under the mortgage of June 18, 1867, all questions respecting which are reserved, and except the lien of said equipment sinking fund five per cent. mortgage of September 3, 1889, on the lease warrants, car-trust certificates, obligations and securities therein mentioned and referred to, and the lien of the said equipment sinking fund six per cent. mortgage of May 1, 1891, on the property covered thereby.

2. That the defendant The Richmond and Danville Railroad Company shall within twenty days after the en-

try of this decree pay, or cause to be paid, to the complainant, the Central Trust Company of New York, or to the clerk of this court, for the use and benefit of the holders of the outstanding consolidated mortgage bonds and scrip of the Richmond and Danville Railroad Company secured by said mortgage of October 22, 1886, and of the unpaid interest, warrants or coupons appertaining thereto, the sum of \$5,002,155.81 in gold coin of the United States, with interest thereon from the date of the entry of this decree to the date of payment, being the sum adjudged to be due and payable by the defendant, and secured by the said consolidated mortgage.

3. That unless the said payment, as hereinbefore directed, shall be made within the time directed as aforesaid the said consolidated mortgage, dated October 22, 1886, be foreclosed, and all property, rights or interest conveyed thereby, and upon which said mortgage is a lien, as the said property is hereinbefore particularly described, be sold as hereinafter directed, and that under and by said sale, all equity of redemption of the defendant, and of any and all persons claiming by, through or under the said defendant or represented by any of the parties hereto (except the interest of the Central Trust Company of New York, as trustee under said mortgage of October 5, 1874, and said mortgage of February 1, 1882, and said claim of the administrators of Kate M. Perkins, deceased, and the interest of the Central Trust Company of New York, as trustee under said two equipment mortgages in and to the equipment, lease, warrants, car trust certificates, obligations and securities in which said equipment mortgages are respectively prior liens as aforesaid) of, in and to said mortgaged premises, property, rights and franchises, and every part and parcel thereof, embraced or included, or intended to be included, in the said mortgage be foreclosed and cut off and forever barred.

4. That the property covered by the said consolidated mortgage of the Richmond and Danville Railroad Company dated October 22, 1886—being all such railroads, appertanances, equipment and franchises, together with the property and tracks in Washington City described in paragraph 15 of this decree, and all leasehold estates and rights and bonds and securities pledged as aforesaid—shall, subject to the provisions aforesaid, and in default of the payment of the sums hereinbefore found to be due and directed to be paid, be sold as hereinafter directed, without valuation, appraisalment, redemption or extension (and subject to said two mortgages of October 5, 1874, and February 1,

1882, which are not foreclosed in this suit, so far as they are liens, upon any part of the property hereby ordered to be sold, and subject the two equipment mortgages aforesaid upon property as to which they are respectively heretofore declared to be prior liens, which are also not foreclosed in this suit), at public auction to the highest bidder or bidders, at the principal passenger station of the said Railroad Company, in the city of Richmond and State Virginia, on a day and at an hour to be fixed by the Special Masters herein appointed in an advertisement of sale, such day and hour to be fixed in accordance with the request of the solicitors for the complainant, and previous notice of the time, place and terms of said sale shall be given by publication of a brief general advertisement, referring to decree for further particulars, and for a more specific description of the property herein ordered to be sold which advertisement shall be published at least once in each week for the term of six weeks preceding the day of sale in three newspapers, one published in the city of Richmond, Virginia, and one in the city of New York, and one in the city of Baltimore. The Special Masters may, at the request of the complainant, adjourn or postpone said sale, and may without further notice, proceed with said sale on any date to which the same may have been thus adjourned. Such Special Masters may give such further notice of sale in addition to the notice above described as they may think proper, or as the complainant may request.

The complainant or any bondholder or bondholders may bid and purchase at said sale.

The said property shall be offered for sale as follows :

The real estate in the District of Columbia, and the office buildings, depots, stations, freight houses and tracks which are described in paragraph XV. of this decree, shall be first offered for sale as a separate parcel, and the Special Masters shall note the highest and best bidder therefor.

They shall next offer for sale as a separate parcel all and singular the railroad, appurtenances, equipment, material, leasehold interests, bonds and property as described in paragraphs VI., X. and XI. of this decree, and the Special Masters shall note the highest and best bidder therefor.

The Special Masters shall then offer for sale as a unit all and singular the property mentioned in paragraphs VI., X., XI. and XV., being the combined two parcels aforesaid, and note the highest and best bid therefor.

If the best bid for the whole property offered as one parcel shall exceed the aggregate of the bids for the same

when offered as two separate parcels, then the Special Masters shall strike off the whole property to the highest and best bidder for the same as sold as one parcel, but if the said unit bid for the entire property as one parcel shall be less than the aggregate of the two separate bids, then the Special Masters shall strike off the separate parcels to the respective highest and best bidders for each of such parcels.

In making such sales the Special Masters shall accept no bid for the property in the District of Columbia, described in paragraph XV. of this decree, when separately offered unless the bidder shall first deposit with them at the time of making the bid as a pledge that such bidder will make good his bid, the sum of \$20,000.

The Special Masters shall accept no bid for the property described in paragraphs VI., X. and XI. of this decree when separately offered, or for the property described in paragraphs VI., X., XI. and XV., when offered as a single parcel who shall not bid therefor at least \$2,000,000, and deposit with them as a pledge that such bidder will make good his bid if accepted by the court, the sum of \$200,000 in money, certified check, or in consolidated 5 per cent. bonds, secured by the mortgage hereby foreclosed, taken at the par thereof.

If the parcel described in paragraph XV. shall be separately sold, and such sale be confirmed, the same shall be conveyed free and clear of the lien, payment or assumption of any receiver's debt, certificate or preferential claims, and the court hereby reserves the power to determine all questions of liens and priorities upon the said property in the District of Columbia described in paragraph XV., and the power to distribute the proceeds of such property, whether sold separately or in connection with other property. All equities and priorities as to such property and the liens thereon or as to the proceeds thereof are hereby reserved for further adjudication.

Of the price for which said property shall be sold there shall be paid in cash at the time of the sale the cash deposit hereinbefore required, which shall be received as a part of the purchase price, and also at the same time, and from time to time thereafter, such other portions of said purchase price shall be paid in cash as the court may direct in order to meet the expenses of this suit. All sums of money received by said Special Masters shall be placed in such bank or banks as the court may direct. The court reserves the right to reject any bid, and to resell said premises and property, upon failure of any purchaser, for twenty days, to comply with any order of the court requiring payment. The bal-

ance of the purchase price not required to be paid in cash may either be paid in cash or the purchaser may satisfy and make good said balance of his bid, in whole or in part, by paying over and surrendering outstanding consolidated mortgage bonds or scrip, and overdue coupons appertaining to said consolidated mortgage bonds, or either, said bonds, scrip, and coupons being received at such price or value as shall be equivalent to the amount that the holders thereof would be entitled to receive thereon in case the entire purchase price were paid in cash. All bonds, scrip and coupons that may be used to make such payment shall be surrendered to the Special Masters and cancelled, if the whole amount due thereon is applied upon the purchase price, but if less than said whole amount is applied then the amount so applied shall be stamped or written upon said bonds and coupons, which shall then be returned to the holder. The purchaser shall not be required to pay immediately in cash the amount of any receiver's certificates, issued under the order of June 28, 1892, and any notes, debts or obligations which shall not have become due and payable at the time of the completion of the purchase, but shall receive the deed and take the property purchased subject to the condition that such amounts shall be paid in from time to time as such obligations shall mature, the court reserving the right to resell the premises or any part thereof in case of any failure or omission of the purchaser to pay such amount into court on account of the bid as aforesaid.

As soon as any sale shall have been made by the said Special Masters in pursuance of this decree, they shall report the same to this Court for confirmation, further certifying to the court compliance by the purchaser or purchasers with the conditions of sale as hereinbefore prescribed. If any bid shall be accepted by the court, and the person making the same shall fail to comply with all the conditions of sale and all orders of the court in respect thereto, the sum deposited by the bidder shall be forfeited, and shall be applied as the court may direct.

The purchaser or purchasers at said sale shall, as part of the consideration for such sale, and in addition to the payment of the sum or sums bid, take the property purchased upon the express condition that he or they or his or their assigns, approved by the court, will, notwithstanding, protect, provide for and make good the receivers' obligation for \$280,000, dated February 17, 1894, deposited in the First National Bank of Charlotte, N. C., as security for the performance of the conditions of the before-mentioned lease of the North Carolina Railroad Company, dated Sep-

tember 11, 1871, and will also pay off and satisfy any and all outstanding and unpaid receivers' certificates or receivers' notes or obligations, issued under the order of June 28, 1892, and having priority over the lien of said mortgage of October 22, 1886, and all other claims heretofore filed in this case or in either of the causes consolidated herein, but only when said court shall allow such claims and adjudge the same to be prior in lien or superior in equity to the mortgage foreclosed in this suit, and in accordance with the order or orders of the court allowing such claims and adjudging with respect thereto; but this provision shall not be in any manner applicable to the rights or claims of the complainant as trustee under the said first mortgage of October 5, 1874, or under said mortgage of February 1, 1882, or under said equipment mortgages or either of them; and the purchaser or purchasers, or their approved assigns, shall be entitled to appeal from any and all orders or decrees of the court in respect to such claims, or any of them, and shall have all the rights in respect to such appeals which the complainant, Central Trust Company of New York, would have in case such appeals had been taken by it. The purchaser or purchasers at said sale shall also, as part of the consideration, in addition to the payment of the sum or sums bid, take the property purchased upon the express condition that he or they, or his or their assigns, approved by the court, will pay off and satisfy all debts or obligations incurred or to be incurred by the receivers having possession of such property, which have not been or shall not be paid by said Receivers, and which shall be adjudged by this court to be debts or obligations properly chargeable against the property purchased, and to be prior or superior to the lien of said mortgage of October 22, 1886.

The court reserves the right to retake and resell said property in case of the failure or neglect of the purchaser or purchasers, or his or their assigns, approved by the court as aforesaid, to comply with any order of the court in respect to payment of prior lien claims above mentioned or receivers' certificates issued under the order of June 28, 1892, within thirty days after service of a copy of such order upon said purchaser or purchasers, or his or their assigns.

Nothing herein contained shall require the purchaser to pay or the Special Masters to use any fund to pay receivers' certificates heretofore issued for any emergency loan not having priority over the lien of said mortgage of October 22, 1886, nor shall the property as taken be sub-

ject to any receivers' certificates heretofore issued for any such loan.

The purchaser or purchasers at said sale shall not be required to assume or adopt any of the leases described or referred to in said consolidated mortgage, but shall have the right to elect whether or not to assume or adopt the same or any thereof.

5. The fund arising from the sale of said mortgaged property shall be applied as follows, to-wit :

First. To the payment of the costs of this suit, including all proper expenses of the sale herein ordered, and such compensation as may be awarded by the court to said Special Masters for making said sale, and the compensation of the complainant, The Central Trust Company of New York, for its services, charges and expenses in the execution of its trust, to be allowed by the court, and such proper allowances as the court may make for the fees and disbursements of the solicitors and counsel of said complainant.

Second. To the payment ratably of the interest due and unpaid upon said consolidated mortgage bonds secured by said consolidated mortgage.

Third. To the payment of the principal due and unpaid upon said consolidated mortgage bonds secured by said consolidated mortgage.

Fourth. Should there be any surplus remaining after making the payments above directed, the same shall be paid into the registry of this court, to abide such order or decree as the court may make in respect thereto.

It is further ordered, adjudged and decreed that M. F. Pleasants, who, owing to his familiarity with this suit and the property involved, and the liens thereon, is deemed especially a proper person, and T. S. Atkins, both of Richmond, Va., and Charles Price, of Salisbury, North Carolina, be, and they are hereby, appointed Special Masters to execute this decree, and, upon confirmation of the sale hereby directed, to make, execute and deliver to the purchaser or purchasers thereof a deed or deeds of the property sold, and at the time of the execution of said deed or deeds the Receivers appointed in this suit shall make, execute and deliver to the said purchaser or purchasers good and sufficient deeds of conveyance or evidence of transfer of any and all property sold, which is vested in or standing in the name of said receivers, or to which said receivers have in any manner acquired title ; and upon confirmation of such

sale, and full compliance with the terms of sale by the purchaser or purchasers, he or they shall be entitled to a deed or deeds of assurance, to be executed, according to law, by The Richmond and Danville Railroad Company.

6. That the purchaser or purchasers of the property herein decreed to be sold shall be vested with and shall hold, possess and enjoy the said mortgaged premises and property herein decreed to be sold, and all the rights, privileges and franchises appertaining thereto, as fully and completely as the said Richmond and Danville Railroad Company now holds and enjoys, or has heretofore held and enjoyed, the same and, further, that the said purchaser or purchasers shall have and be entitled to hold said railroads and property free and discharged of and from the liens of the mortgage foreclosed in this suit, and from the claims of the parties to this suit, or any of them, except the claims and liens arising under the said mortgages of October 5, 1874, and February 1, 1882, and except the claims and liens of the trustee under said two equipment mortgages on the property as to which they are hereinbefore declared to be respectively prior in lien to the consolidated mortgage, and except such claims as shall hereafter be adjudged by this court to be prior in lien or superior in equity to the bonds hereinbefore foreclosed, and which the purchaser or purchasers at such sale may hereafter be required to pay, in addition to the price bid, as hereinbefore provided.

All questions not hereby disposed of and determined, including the discharge of the receivers and the passing of their accounts, are hereby reserved for future adjudication, the settlement of the same being held not to be necessary for the purposes of this decree, and the court reserves the right to make such further order, at the foot of this decree, as may seem just and proper.

And nothing herein shall be construed to give to the purchaser the \$1,000,000 of Piedmont Railroad bonds, or other bonds and stocks not mentioned herein, as being included in the mortgage foreclosed.

The court hereby reserves for further consideration and decree all questions as to the disposition of any of the coupons falling due upon any of the mortgage bonds specified in paragraph X. prior to October 1, 1892.

April 13th, 1894.

N. GOFF,
Circuit Judge.

And on another day, to-wit: June 15, 1894, came the receivers, and filed a petition, which petition, together with the order thereon, is as follows:

**PETITION OF RECEIVERS FOR LEAVE TO PURCHASE
HALF INTEREST IN COTTON COMPRESS.**

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York and others <i>vs.</i> The Richmond and Danville Railroad Company and others.	}	Consolidated Cause, In Equity.
--	---	-----------------------------------

The petition of Samuel Spencer, F. W. Huidekoper and Reuben Foster, receivers, respectfully shows:

I. That they were appointed receivers of The Richmond and Danville Railroad Company by this court in the above entitled cause, and as such receivers they are operating The Richmond and Danville Railroad Company and certain of its leased and operated lines. That one of said leased lines is the North Carolina Railroad.

II. That in the year 1888, by a joint agreement between The Richmond and Danville Railroad Company and the Carolina Central Railroad Company, a cotton compress was built at Charlotte, North Carolina, jointly by said two companies. That the said compress is half on the property of the North Carolina Railroad and half on the property of the Carolina Central Railroad. That the total cost was \$36,190.44, and that half of said cost was paid by The Richmond and Danville Railroad Company and half by the Carolina Central Railroad Company. That since the building of said compress the same has been owned and operated jointly by The Richmond and Danville Railroad Company and the Carolina Central Railroad Company, under the agreement, a copy of which is hereto annexed marked Exhibit "A."

III. That the Carolina Central Railroad Company has no longer any use for the aforesaid compress, and has instituted proceedings against The Richmond and Danville Railroad Company and your petitioners for the sale of said compress, and this matter has been in litigation between the parties for some time past.

IV. That it is absolutely necessary for the operation of the trust property in your petitioners' hands that they have a cotton compress located at Charlotte, and, by reason of the aforesaid litigation, they have been considering the advisability of removing a cotton compress from West Point, in the State of Virginia, to Charlotte; but to pursue this course your petitioners would have to expend a large amount of money.

V. Your petitioners have entered into an agreement with the Carolina Central Railroad Company for the purchase of its half interest in said cotton compress for the sum of \$12,000, which your petitioners believe is a reasonable price for the same. That under said agreement your petitioners are to have the right to keep the said compress in its present location, to-wit: partly on the property of the Carolina Central Railroad Company, for the period of one year, and that after said period of one year your petitioners are to receive six months' notice from the Carolina Central Railroad Company before they can be required to remove said compress from its present location.

Your petitioners believe that it will be for the benefit and advantage of the trust estate in their hands and of all the parties to this cause that they be permitted and authorized to purchase the interest of the Carolina Central Railroad Company in said compress for the sum of \$12,000, and therefore pray that this court will pass an order authorizing them to purchase said interest for said sum.

SAMUEL SPENCER,
F. W. HUIDEKOPER,
REUBEN FOSTER,

Receivers of the Richmond
and Danville Railroad Company.

H. L. BOND, JR.,
Sol. for Receivers.

DISTRICT OF COLUMBIA, }
City of Washington, }

F. W. Huidekoper, being duly sworn, says that he is one of the receivers of The Richmond and Danville Railroad Company, and that the matters and facts set forth in the foregoing petition are true to the best of his knowledge, information and belief.

F. W. HUIDEKOPER.

Subscribed and sworn to before me this 14th day of
June, A. D. 1894.

Notarial
Seal.

CHAS. P. LEE,
Notary Public.

EXHIBIT A.

Agreement made and entered into this tenth day of September, 1888, by and between The Richmond and Danville Railroad Company, a corporation duly organized and existing under the laws of the State of Virginia, party of the first part, and the Carolina Central Railroad Company, a corporation duly organized and existing under the laws of the State of North Carolina, party of the second part.

Whereas, the party of the first part has agreed to purchase from S. B. Steers & Co., of Cooperstown, in the State of New York, a certain cotton compress to be erected at Charlotte, in the State of North Carolina, upon the terms and conditions expressed in the agreement with the said S. B. Steers & Co., which said agreement is hereto annexed;

And whereas, the party of the second part is desirous of owning one-half interest in the said contract with S. B. Steers & Co. and of the cotton compress therein agreed to be purchased:

Now, therefore, in consideration of the premises and of the sum of one dollar by each party to the other paid, the receipt whereof is hereby acknowledged, this agreement witnesseth:

The party of the first part hereby covenants and agrees to assign, and hereby does assign, one undivided one-half interest in the said contract, with all the rights conferred and obligations imposed upon the said party of the first part under the said contract hereto annexed.

The party of the second part hereby covenants and agrees, in consideration of the assignment of such one undivided one-half interest, to pay, upon demand, one-half of the sum in said contract agreed by the party of the first part to be paid to the said S. B. Steers & Co., and hereafter to bear equally and jointly with the party of the first part any and all costs and expenses necessary to the erection of the said cotton compress and to placing the same in com-

plete condition for operation, and that hereafter all costs, expenses and outlays in connection with the improvement and operation of the said cotton compress shall be equally borne by the parties hereto, and the profits thereof shall be divided between the said parties in the same proportion.

It is the intent of this agreement that, upon the payment by the party of the second part of one-half the sum referred to in said agreement with S. B. Steers & Co., that said cotton compress shall be the joint property of the respective parties hereto and their respective successor or successors.

In witness whereof the parties hereto have caused these presents to be signed by their respective presidents and their respective corporate seals to be hereto affixed the day and year first above written.

{ Seal. }

THE RICHMOND AND DANVILLE
RAILROAD COMPANY,

By GEO. S. SCOTT, President.

Attest :

A. J. RAUH,

Ass't Sec'y.

{ Seal. }

THE CAROLINA CENTRAL
RAILROAD COMPANY,

By JOHN M. ROBINSON, P't.

JNO H. SHARP, Sec'y.

To W. G. Oakman, Esq., 2nd V. Pres't,
Richmond and Danville Railroad Co.

Dear Sir :

We propose to furnish and erect for you at Charlotte, N. C., one of our new 90-inch cylinder Morse Cotton Compressors, complete or in part, as follows :

90-inch Compressor, including pump and all steam pipe connections and fittings,	\$26,850 00
If with brass bushings in eye bars, extra,	500 00
" " iron stairs and platforms,	450 00
" " feed water heater, 3' x 12',	650 00
" " boilers, 2, 22' x 50'', with 14 6'' flues and two steam drums 3' x 14', shells of first-class steel or flange iron,	2,100 00
Or as complete as any Morse press yet built,	<u>\$30,550 00</u>

Or for prompt payment even \$30,000, or may deduct for any part omitted amount as above named.

Terms of payment: On shipment with bill of lading, say \$9,000; during erection for labor, \$1,000, and the remainder on completion and acceptance of machinery. The above figures do not include any freight on the machinery or on the material used in and for its erection. Do not include any wood or brick work, but does include the complete erection ready for steam of all parts furnished by us, and guaranteed against breakage for six months after beginning work.

We have a 90-inch Morse Compressor ready for shipment at the Reading Iron Works (except the boilers), Reading, Pa., and can ship soon as can be loaded. We will agree to erect the same in twenty-five working days after arrival at place of erection or after you have the brick foundation and cupola building ready for our use. We estimate that the brick work and wood work (press timbers and cupola building) will cost you, completed, one thousand to twelve hundred dollars, and ought to be completed in ten to fifteen days after material be placed on ground.

[Signed] S. B. STEERS & CO.

New York city, August 6th, 1888.

ORDER ON FOREGOING PETITION.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New
York and others
vs.
The Richmond and Danville
Railroad Company and others

Consolidated Cause,
In Equity.

Now come Samuel Spencer, F. W. Huidekoper and Reuben Foster, receivers, and file their petition, asking that they be authorized by an order of this court to purchase the interest of the Carolina Central Railroad Company in the cotton compress at Charlotte, North Carolina, for the sum of \$12,000, and it appearing that the passing of such an order is consented to by all the parties in interest, and upon consideration of said petition it is hereby ordered that Samuel Spencer, F. W. Huidekoper and Reuben Foster, receivers of The Richmond and Danville Railroad Company, be, and they are hereby authorized to

purchase the interest of the Carolina Central Railroad Company in the cotton compress at Charlotte, North Carolina, which compress is owned jointly by The Richmond and Danville Railroad Company and the Carolina Central Railroad Company, for the sum of \$12,000, said contract of purchase to contain a provision allowing said compress to remain in its present location, partly on the property of the Carolina Central Railroad Company, for the period of one year, and after the expiration of one year to be removed at any time upon six months' notice.

For this purpose the said receivers are authorized to use the income coming into their hands from the operation of the property in their charge.

N. GOFF,

June 15th, 1894.

Circuit Judge.

We hereby consent to the entry of the above order.

BUTLER, STILLMAN & HUBBARD,

Sol's for C. T. Co.

HENRY CRAWFORD,

Solicitor for Clyde et al.

And on another day, to-wit: 15 June, 1894, came the Special Masters and filed their report of sale, which report, together with the order thereon, is in the words and figures following, to-wit:

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York	} In Equity.
<i>vs.</i>	
Richmond and Danville Railroad Company.	
	} Cons. Cause.
	} No. 469.

Come now M. F. Pleasants, Thomas S. Atkins and Charles Price, Special Masters heretofore appointed to make sale of the property under the final decree of foreclosure rendered in this cause, and file their report in writing herein, together with exhibits; and it is ordered, that the same be spread at large upon the records of the court in this cause, and the same reads as follows:

SPECIAL MASTER'S REPORT OF SALE.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York	} In Equity. No. 469.
<i>vs.</i>	
Richmond and Danville Railroad Company and others.	

The undersigned, Matthew F. Pleasants, Thomas S. Atkins and Charles Price, heretofore appointed as Special Masters under final decree of foreclosure and sale, entered by this court in the above entitled cause on April 13th, 1894, reference being thereto had, respectfully report to the court:

Pursuant to the directions of said decree, we caused a notice to be published once in each week for the term of six weeks preceding the day of sale, in the "Richmond Times," a newspaper published in the city of Richmond, Virginia, and in the "New York Times," a newspaper published in the city of New York, and in the "Baltimore American," a newspaper published in the city of Baltimore, Maryland, that we would offer and sell all and singular the line of railroad, equipment, bonds, property and franchises described in such decree and by said court ordered to be sold, at public auction, to the highest bidder or bidders, at the principal passenger station of the Richmond and Danville Railroad Company in the city of Richmond and State of Virginia, at 11 o'clock A. M., on June 15, 1894, and we included in said notice a general description of the property to be sold, and the terms and conditions of such sale.

We annex hereto a copy of such notice of sale which we caused to be published in said three newspapers in compliance with the decree of the court.

At 11 o'clock A. M., on June 15, 1894, we attended at the principal passenger station of the said Richmond and Danville Railroad Company, in the city of Richmond and State of Virginia, and then and there, as required by such decree, did offer for sale at public auction to the highest bidder or bidders the railroad property and franchises, in such decrees directed to be sold, such offer being in manner following:

We first offered for sale, as separate parcel No. 1, the real estate of the said Richmond and Danville Railroad Company situate in the District of Columbia, and the office buildings, depots, stations, freight-houses, appurtenances

and tracks thereon, as more specifically described in Paragraph XV of the said final decree of sale, reference being thereto had: and the highest and best bid for said property when so offered by us as single parcel No. 1 was made by Charles H. Coster and Anthony J. Thomas, purchasing committee, who offered and bid for such property as such separate parcel the sum of twenty-five thousand dollars (\$25,000), and such bidder, as required by the decree, deposited with us as Special Masters, at the time of making such bid, the sum of twenty thousand dollars (\$20,000) in cash by certified check on the First National Bank of Richmond, Virginia.

We next offered for sale separate parcel No. 2, being all and singular the railroad, appurtenances, equipment, material, leasehold interest, bonds, property and franchises, as more specifically described in Paragraphs VI, X and XI of the said final decree of sale, reference being thereto had, and all rights, title and interest of the said Richmond and Danville Railroad Company in and to such property and franchises; and Charles H. Coster and Anthony J. Thomas, purchasing committee, bid for such separate parcel No. 2 the sum of two million dollars (\$2,000,000), which was the highest and best bid therefor, and such bidders deposited with us as Special Masters, at the time of making such bid, as a pledge that they would make good their said bid, the sum of fifty thousand dollars (\$50,000) cash by certified check on the First National Bank of Richmond, Virginia, and one hundred fifty thousand dollars (\$150,000) in consolidated five per cent. Richmond and Danville Railroad Co. bonds, secured by the mortgage foreclosed in this action, and having all overdue coupons attached to such bonds.

Thereupon, as required by the said decree, we did next offer for sale as a unit and in a single parcel, all and singular, both the above-mentioned parcel No. 1 and parcel No. 2, which had been heretofore separately offered, being the entire railroad equipment bonds, property and franchises mentioned in Paragraphs VI, X, XI and XV of the said final decree of sale, reference being thereto had, and being all and singular the mortgaged property specified in said decree and ordered to be sold, subject to the liens, preferential claims and conditions therein set forth; and for such combined two parcels (excepting certain leaseholds hereafter specified), when so offered as a unit, Charles H. Coster and Anthony J. Thomas, purchasing committee as joint tenants, and not as tenants in common, and for the use, benefit and behoof of a corporation to be organized

by them pursuant to the terms of an act of the General Assembly of the Commonwealth of Virginia, approved February 20th, 1894, entitled "An Act authorizing the purchasers of the Richmond and Danville Railroad, their assigns and successors, to become and be a corporation," and vesting other powers, bid therefor the sum of two million thirty thousand dollars (\$2,030,000), and such persons were the highest and best bidders for such combined two parcels so offered for sale as a unit, and the said Coster and Thomas deposited with us as Special Masters, as a pledge that they would make good their bid if accepted by the court, the sum of one hundred and fifty thousand dollars (\$150,000) in consolidated five per cent. bonds of the Richmond and Danville Railroad Company, taken at the par value thereof (with all overdue coupons attached), and the sum of seventy-five thousand dollars (\$75,000), in certified checks upon the First National Bank of Richmond, Virginia.

As the sum so bid by the said Coster and Thomas, purchasing committee, for the combined two parcels, when offered as a unit, exceeded the aggregate of the two bids for the property when offered as two separate parcels, the undersigned did strike off the whole railroad, property and franchises described in the decree and ordered to be sold, excepting such lease holds, as hereafter specified, to the said Coster and Thomas, purchasing committee, as joint tenants, and not as tenants in common, bought as one parcel, upon and for their said bid of two million and thirty thousand dollars (\$2,030,000), and did return the deposits made by the separate bidders upon bids upon parcels 1 and 2 when separately offered.

At and prior to the making of their said bid upon all the property as single parcel, the said Coster and Thomas notified the undersigned that they elected, if they became purchasers, not to assume, accept, or be in any manner bound by any of the following leases described in the decree, viz: The lease of the Columbia and Greenville railroad to said Richmond and Danville Railroad Company, dated May 1, 1886, and the lease of the Charlotte, Columbia and Augusta Railroad to said Richmond and Danville Railroad Company, dated May 1, 1886, or the lease or operating contract of the Richmond, York River and Chesapeake Railroad Company to the said Richmond and Danville Railroad Company, dated July 9, 1886. The said purchasers have delivered to us, and we herewith return into court, as Exhibit A, a copy of their written acknowledgment of said purchase and their agreement fully to pay and

discharge their said bid, and to obey and perform all such orders and decrees as the court shall enter against them by reason of such purchase, if such sale is confirmed, and their declaration that their said bid and purchase was for the use, benefit and behoof of a corporation to be organized by them and their associates, under the said Act of Assembly of the Commonwealth of Virginia, to be called Southern Railway Company.

We hold, subject to the court's order, the \$150,000 consolidated bonds, and \$75,000 cash paid over to us by such purchasers on their bid.

MATTHEW F. PLEASANTS,
THOS. A. ATKINS,
CHAS. PRICE,

Special Masters.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York	} In Equity.
^{vs.}	
Richmond and Danville Railroad Company and others.	

Having reference to the several foreclosure decrees specified in the notice of sale published by the Special Masters appointed in the above-entitled cause, the undersigned, Purchasing Committee, as joint tenants, and not as tenants in common, this June 15, 1894, at Richmond, Virginia, hereby acknowledge that we have purchased at public auction from the Special Masters of such courts, Matthew F. Pleasants, Thomas S. Atkins and Charles Price, all the railroad, equipment bonds, property and franchises of the Richmond and Danville Railroad Company (except the leasehold interests in the Charlotte, Columbia and Augusta, Columbia and Greenville and Richmond, York River and Chesapeake), as described in the annexed decree and advertisement of sale, as offered and sold by them as a unit and a single parcel, at and for the sum of two million and thirty thousand dollars (\$2,030,000, and we hereby promise and agree with such Special Masters, if such sale is confirmed, fully to pay and discharge the sum so bid by us for such property in accordance with the decree, and, in all things, comply with the terms and conditions of such sale and such orders as the court has already or may hereafter enter to enforce the purchase of such property by us under the provisions of such decree.

We hereby declare that our bid and purchase was made for the use, benefit and behoof of a corporation to be organized by us and associates, under the act of the General Assembly of the Commonwealth of Virginia, approved February 20, 1894, entitled "An Act authorizing the purchasers of the Richmond & Danville Railroad, their assigns and successors, to become and be a corporation, to adopt a name therefor, and to possess and exercise general powers; and authorizing the leasing to or by, and the consolidation therewith of other corporations," the name and style of which corporation is to be "Southern Railway Company."

Witness our hands this June 15, 1894.

C. H. COSTER,
ANTHONY J. THOMAS,
Publishing Committee.

N. GOFF,
Circuit Judge.

June 15, 1894.

And on another day, to-wit: 15 June, 1894, came the purchasers and filed their motion to confirm the Special Masters' report of sale, which motion, with the order thereon, is as follows:

MOTION OF PURCHASERS TO CONFIRM SPECIAL MASTERS' SALE.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

Central Trust Company of New York	} In Equity.
<i>vs.</i>	
Richmond and Danville Railroad Com- pany and others.	

Your petitioners, Charles H. Coster and Anthony J. Thomas, a purchasing committee, as joint tenants and not as tenants in common, having this day become the accepted bidders and purchasers at the sale by the Special Masters of all of the railroad, equipment, bonds, property and franchises of the Richmond and Danville Railroad Company, ordered to be sold by the final decree rendered herein on April 13, 1894 (excepting only certain leasehold interests specified by us to the Special Masters, as stated in their report of sale), respectfully show to the court:

That the Special Masters have this day filed their re-

port of sale made by them of the said railroad, property and franchises, showing full compliance with the decree of this court in respect to their duties as to such sale, and in such report have shown to the court that the undersigned were the highest and best bidders for all such railroad, property and franchises when offered and sold as a single parcel at and for the sum of \$2,030,000, and that all such railroad, property and franchises were by the said Special Masters struck off to the undersigned on such bid as the highest and best bidders therefor. Petitioners as such purchasers have paid over to the Special Masters on the accepted bid the sum of \$75,000 in money and \$150,000 in Richmond and Danville Railway Company Consolidated 5 % bonds, and have fully complied with the terms of such decree and sale so far as now obligatory upon them, and are, upon the said report, entitled to a confirmation thereof.

The undersigned, as such purchasers, own and hold in possession \$4,513,280 consolidated bonds and scrip, including the bonds paid over to the Special Masters, out of the decreed principal of \$4,527,350 and are ready and willing to fully complete their purchase and to make payment of their said bid and comply with the court's further orders now and hereafter to be entered in that behalf, according to the terms of the decree. As the Special Masters were by us notified at such sale, the bid and purchase of such railroad, property and franchises was made by us for the purpose and with the intent of having the title thereto vested in a corporation to be organized by us and our associates, to be called the "Southern Railway Company," under the authority and in pursuance of an Act of the General Assembly of Virginia, approved February 20, 1894, entitled "An Act authorizing the purchasers of the Richmond and Danville Railroad, their assigns and successors, to become and be a corporation, to adopt a name therefor, and to possess and exercise general powers; and authorizing the leasing to or by and the consolidation therewith of other corporations," a copy of which act is made part hereof. We therefore move the court to approve the report made by such Special Masters and confirm the said sale to and for the use, benefit and behoof of the said "Southern Railway Company," and for such further order as to the court may seem proper in the premises.

C. H. COSTER,
ANTHONY J. THOMAS.

FRANCIS LYNDE STETSON,
Solicitor.

**ORDER NISI ON REPORT OF SALE BY SPECIAL MASTERS,
AND MOTION OF PURCHASERS FOR CONFIRMATION.**

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

Central Trust Company of New York
vs.
Richmond and Danville Railroad Com-
pany and others. } In Equity.

Now, on this June 15, 1894, came the Special Masters, Matthew F. Pleasants, Thomas S. Atkins and Charles Price, heretofore appointed to make sale of the mortgaged property, as ordered by the court in the final decree of foreclosure, dated April 13, 1894, and file their report of sale, together with exhibits, showing that after due notice and advertisement of sale, in accordance with said decree, the said railroad, property and franchises ordered to be sold were by them offered for sale in the manner required by said decree, at the principal passenger station of the Richmond and Danville Railroad Company, in Richmond, Virginia, at eleven o'clock A. M., on June 15, 1894, and that Charles H. Coster and Anthony J. Thomas, purchasing committee, as joint tenants, and not as tenants in common, were, as stated in said report of sale, the highest and best bidders for all and singular such railroad, equipment bonds, property and franchises, when offered as a single parcel, excepting the certain leaseholds specified in such report, and that the same was struck off to them as the accepted bidders and purchasers thereof for the sum of two million and thirty thousand dollars (\$2,030,000), and, also, that such purchasers have paid to said Special Masters \$150,000 in the consolidated five per cent. bonds of said Richmond and Danville Railroad Company, with all unpaid coupons attached, and \$75,000 cash, on account of such bid, and have in all things complied with the terms of sale and the orders of the court binding upon bidders and purchasers, in that behalf, so far as now obligatory upon them.

Come also the said Coster and Thomas, purchasing committee, and file their petition, in writing, showing such sale and purchase by them, and the partial payment and performance of such bid, and further submitting themselves to the jurisdiction of the court, and avowing that they are ready to fully discharge their said bid, and submit to and perform all the decrees of the court now or hereafter to be

entered herein and binding upon them as purchasers, and also moving for confirmation of such reported sale, for the use, benefit and behoof of the "Southern Railway Company," a corporation to be organized by such purchasers and their associates under a law of Virginia, approved February 20, 1894, as set out in said petition.

It is therefore ordered and decreed that the report of the said Special Masters, and the petition of the said purchasers for confirmation of such sale to them for the use, benefit and behoof of said Southern Railway Company be set down for hearing in open court and further order and decree thereupon, at three o'clock P. M., on June 15th, 1894, with leave to all parties then to show cause, if any, why the report of the said Special Masters should not be approved and a decree be entered confirming the sale of the property, as reported.

N. GOFF,
Circuit Judge.

June 15, 1894.

And on another day to-wit: On the 15th day of June, 1894, the following decree was entered:

DECREE CONFIRMING SPECIAL MASTERS' SALE.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York and others	} In Equity. Consolidated Cause. No. 469.
<i>vs.</i>	
Richmond and Danville Railroad Company and others.	

DECREE CONFIRMING SPECIAL MASTERS' SALE.

Now, on this June 15th, 1894, come again the parties by their respective solicitors, and come also the purchasers, Charles H. Coster and Anthony J. Thomas, purchasing committee, and their petition that the report of the Special Masters, filed herein on June 15, 1894, should be approved and the sale to them of the railroad, property and franchises of the Richmond and Danville Railroad Company should be confirmed and made absolute, came on to be heard:

And it appearing by such Special Masters' report that they have fully complied with the directions of said decree as to the sale of said property and that such purchasers were the highest and best bidders for such railroad, property and franchises, sold as a single parcel, except the three leaseholds hereinafter specified, and that the same was struck off to them for the sum of \$2,030,000.00, subject, however, to the mortgages, receivers' debts and other preferential liens and claims, and to all and singular the terms and conditions in said decree set forth, and that they have made the payments thus far obligatory upon them, and no sufficient cause being shown against the report of the special masters, and it further appearing to the court that the said purchasers have delivered over to the Special Masters, for and on account of their bid, and the payment thereof four thousand, five hundred and thirteen (4,513) consolidated bonds of the Richmond and Danville Railroad Company, with all the unpaid coupons thereto attached, and two hundred and eighty dollars (\$280) in bond scrip, the court orders and decrees that the said report of the Special Masters be in all things approved, and the sale made by them to the said Charles H. Coster and Anthony

J. Thomas, purchasing committee, as joint tenants and not as tenants in common, of all and singular the railroad, equipment bonds, property and franchises of the Richmond and Danville Railroad Company, as described in and by the decree of foreclosure entered in this cause on April 13, 1894 (excepting, however, the leaseholds in the Charlotte, Columbia and Augusta, the Columbia and Greenville and the Richmond, York River and Chesapeake Railroads, which such purchasers declined to buy), at and for the sum of two million and thirty thousand (\$2,030,000.00) dollars, by them bid, be, and the same is, in all things ratified, approved, confirmed and made absolute, subject, however, to all the mortgages, receivers' debts and preferential claims and to all equities reserved and to all and singular the conditions of purchase as recited in such decree, and the continued right of the court to adjudge and declare what receiver's or corporate debts are prior in lien or in equity to the lien of the mortgage herein foreclosed, or ought to be paid out of such proceeds of sale in preference to the mortgage bonds; and this court expressly reserves for future adjudication and power thereby to bind the property sold all liens, claims and equities specified in and reserved by the said final decree of foreclosure so as aforesaid entered on April 13, 1894.

It further appearing to the court that the purchase of said railroad, property and franchises by said Coster and Thomas, as purchasing committee, was for the purpose and with the intent of having the title of all the said railroad, property and franchises vested in and held by a corporation to be organized by them under the laws of the State of Virginia.

And it further appearing that the said Coster and Thomas, under the authority of an Act of the General Assembly of Virginia, approved February 20, 1894, entitled "An Act authorizing the purchasers of the Richmond and Danville Railroad, their assigns and successors, to become and be a corporation, to adopt a name therefor," and vesting other powers, reference being thereto had, have determined to adopt the name of the "Southern Railway Company" as the corporate name and appellation of the said new corporation, organized by them as such purchasers under the said act, for the purpose of receiving title and owning all of said railroad, property and franchises so purchased.

And it further appearing that the said Coster and Thomas, as such purchasing committee, desire and have requested that the sale made under the decree of this court,

and the conveyance by the special masters and receivers and the deed of further assurance to be executed by said Richmond and Danville Railroad Company to them as such purchasers, shall be decreed to be for the sole use, benefit and behoof of the Southern Railway Company, so that upon the execution and delivery of such conveyance such last-named corporation shall have, possess and be invested with all the estate, right, title and interest in and to such railroad and all other property, with their appurtenances, and all the franchises, rights and privileges described in and sold under the final decree of foreclosure and sale of this court as stated in said report of sale, and not including the three leasehold estates above mentioned, and that this court will accept said Southern Railway Company as the purchaser in its corporate name and behalf, of all the said railroad, property and franchises so sold under its decree, and as such purchaser it shall be obligated to complete the said bid and pay for all such property the balance remaining of such accepted bid, and in all other respects comply with the orders or decrees now or to be hereafter entered obligatory on such purchaser.

It is therefore ordered and decreed by the court that the confirmation of the said sale so reported by the said Special Masters, and the purchase of the railroad, property and franchises by said Coster and Thomas, as purchasing committee, shall be, and the same is hereby, confirmed to them, for the sole use, benefit and behoof of the said Southern Railway Company, created by and under the said Act of the General Assembly of Virginia, approved February 20, 1894.

And the court accepts the said Southern Railway Company as the purchaser of all and singular the railroad, property and franchises sold under this decree, and holds it as such purchaser obligated to complete and fully to pay the said bid and comply with all the orders of the court, already entered and hereafter, from time to time, to be entered by it obligatory on such purchaser.

And the court further reserves full power from time to time to enter orders binding upon the said Southern Railway Company as such purchaser, requiring it to pay into the registry of the court all such sums as have been or may be ordered by the court for the payment of any and all receivers' debts or claims adjudged or to be adjudged as prior in lien or equity to the mortgage herein foreclosed, or entitled to preference in payment out of the proceeds of sale.

It is further ordered and decreed that the Special Mas-

ters are hereby authorized and directed on the request of said confirmed purchasers to sign, seal, execute, acknowledge and deliver a proper deed of conveyance to said Coster and Thomas, purchasing committee, for the sole use, benefit and behoof of the said Southern Railway Company, conveying all and singular the railroad, equipment, bonds, property and franchises so as aforesaid sold under the said decree. Upon the delivery of said conveyance, the said Southern Railway Company shall fully possess and be invested with all the estate, right, title and interest in, to and of such railroad, equipment, bonds, property and franchises so sold as the absolute owner thereof, to have and hold the same under and according to the said Act of the General Assembly of Virginia, approved February 20, 1894, reference being thereto had. In order to facilitate the recording thereof, six counterparts of such deed may be executed, acknowledged and delivered by the Special Masters and Receivers, all or any one or more of which may be recorded, and any one or more of such counterparts when executed, acknowledged and delivered shall severally or collectively be deemed to be an original, and for all intents and purposes be one instrument.

It is further ordered and decreed that the Receivers of this court shall, by way of further assurance, join in the said conveyance in counterpart originals so ordered to be executed by the Special Masters of this court.

On exhibition of the deed executed and delivered by the Special Masters as herein ordered, the Receivers of this court are authorized, directed and required to forthwith turn over to the said Southern Railway Company the possession of all and singular the said railroad and property therein described and conveyed.

It is also further ordered that by way of further assurance and confirmation of title to such purchaser the said Richmond and Danville Railroad Company, mortgagor, by its proper officers and under its corporate seal, shall, upon request of said Southern Railway Company, sign, seal, execute, acknowledge and deliver to said Southern Railway Company all proper deeds of conveyance, transfer, release and further assurance of all the railroad, property and franchises so as aforesaid sold under the decree of this court and embraced in the deed of the Special Masters so as to fully and completely transfer to and invest in the said Southern Railway Company the full legal and equitable title to all such railroad, property and franchises hereby sold or intended to be sold.

The court reserves full power notwithstanding such

conveyance and delivery of possession to retake and resell the property this day confirmed to such purchaser if it fails or neglects fully to complete such purchase and comply with the orders of court in respect to full compliance therewith or to pay into court in accordance with such decree of sale and orders of court, all sums of money hereafter ordered by the court to be paid into its registry to discharge any and all such debts, liens or claims as it may decree ought to be paid out of the proceeds of sale in preference to the mortgage herein foreclosed.

The special masters shall deposit the cash paid to them by the purchasers in the First National Bank of Richmond, Virginia, to abide the further order of the court herein, and shall deposit to their order in the Central Trust Company of New York all the consolidated bonds and attached coupons and scrip paid over to them by the purchaser, so that the same may be stamped with the credit or payment on account thereof upon such bid, after the amount thereof shall be adjudged by the court such bonds, coupons and scrip thereafter to be returned to the said purchasers.

June 15th, 1894.

N. GOFF,
Circuit Judge.

And on another day, to-wit: 13th July, 1894, came the receivers and filed a report, which report, with the order thereon, is as follows:

REPORT OF RECEIVERS.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York
et al.

versus

Richmond & Danville Railroad Company et al.

In Equity.
Consolidated
Causes.

To the Honorable the Judge of said Court:

The report of Samuel Spencer, Frederic W. Huidekoper and Reuben Foster, receivers heretofore appointed in this cause, respectfully shows:

1st. That in compliance with the order of this honorable court, entered in this cause on the 15th day of June, 1894, these receivers did, at twelve o'clock midnight, on June 30th, 1894, deliver possession to the Southern Rail-

way Company of all and singular the railroads, property and franchises embraced in the deed of the special masters appointed to make the sale in this cause, taking the receipt of said Railway Company therefor.

2nd. These receivers, in further compliance with said order of June 15th, report that their assets as receiver, as nearly as they can now state them, consist of cash in hand, accounts collectable and in process of collection, and aggregate, as nearly as can now be estimated, the sum of

\$480,000.00

That their liabilities consist principally of debts incurred for labor and supplies in the operation of the system of railroads in their charge as receivers of this court, and aggregate, as nearly as they can now estimate the same, the sum of

\$1,005,145.50

Your receivers herewith file detailed schedules of their indebtedness represented by unpaid vouchers for the month of March and prior thereto, aggregating

\$ 31,614.93

For the month of April,

202,296.25

For the month of May,

171,234.32

They are unable at this time to file such detailed schedules of vouchers for the month of June, but estimate that the same will amount to

\$175,000.00

They further estimate that the accounts not yet rendered will continue to be presented for the next sixty or ninety days, and amount to

\$125,000.00

and that their June pay-rolls and salary vouchers will amount to

\$300,000.00

The aggregate of the sums above mentioned is the said sum of

\$1,005,145.50

They further estimate that they will be able to collect of their assets from the first day of July to the 20th day of July, the date on which pay-rolls and salary vouchers for the month of June are regularly payable, the sum of

\$250,000.00

The above statements do not include liabilities on accounts due connecting lines, or assets consisting of accounts collectable from connecting lines. Of the amount of such liabilities and assets it is impossible at this time to make any close estimate; but your receivers are informed and believe that the accounts collectable from connecting lines will offset the accounts due such lines, taking all connecting lines together.

3rd. In further compliance with said order of June 15th, these receivers respectfully report to the court that they are having prepared a detailed inventory showing supplies and material on hand at the date of sale by the

special masters in this cause, and such supplies and materials as were turned over and delivered to the Southern Railway Company; that such inventory is nearly completed and will be filed within a short time. At present these receivers can only state that the estimated value of materials and supplies turned over is about \$500,000.00

4th. In further compliance with said order of June 15th, these receivers report the following executory contracts entered into by them as receivers, under authority of this honorable court, to-wit:

Washington, Alexandria & Mt. Vernon Electric Railway Co., crossing tracks of the Virginia Midland Railway at Alexandria, Va., dated June 22, 1892. Approved by order dated May 23, 1893.

Seaboard Air Line Belt Railroad Company and the Richmond & Danville Railroad Company, and F. W. Huidekoper and Reuben Foster, receivers of said company, dated September 28th, 1892; covers undergrade crossing near Atlanta, Ga.

Burnham, Williams & Co., proprietors of Baldwin Locomotive Works, February 6, 1893, four passenger locomotives. Approved by order dated March 9, 1893.

Deed between the Richmond & Danville Railroad Co., The Virginia Midland Railway Co., the Franklin & Pittsylvania Railroad Co., and F. W. Huidekoper and Reuben Foster, receivers, of the first part, and the Roanoke & Southern Railway Co., the Norfolk & Western Railroad Co., and T. W. Huske, trustee, of the second part, dated February 10, 1893, covering crossing by the Roanoke & Southern Railway Co., of the right of way of the Franklin & Pittsylvania Railroad near Rocky Mount, Franklin Co., Va. Approved by order dated March 9, 1893.

Chesapeake & Ohio Ry. Co., Richmond Chemical Works, and R. & D. R. R. Co., dated January 8, 1892, construction and operation of branch track to Chemical Works near Richmond, Va. This contract is executed by F. W. Huidekoper and Reuben Foster, receivers, March 20, 1893. Approved by order dated March 9, 1893.

National Hotel Co., Washington, D. C., May 18, 1893, covering $3\frac{1}{2}$ years lease of ticket office in National Hotel Building, Washington, D. C.

The Atlanta City Street Railway Co., and the Richmond & Danville Railroad Co., and F. W. Huidekoper and Reuben Foster, receivers of said company, covers undergrade crossing of the Atlanta & Charlotte Air Line at Irwin street, Atlanta, Ga., June 9, 1893. Approved by order dated May 23, 1893.

Round Hill Milling Co. and the Washington, Ohio & Western R. R. Co., the Richmond & Danville R. R. Co., and Samuel Spencer, F. W. Huidekoper and Reuben Foster, receivers of the last-named company, dated November 29, 1893, covering use of right of way at Round Hill, Va., for a flour and corn mill for a term of 30 years from November 29th, 1893. Approved by order dated November 21, 1893.

Chesapeake & Ohio Railway Co. and the Richmond & Danville Railroad Co., and Samuel Spencer, F. W. Huidekoper and Reuben Foster, receivers, dated December 3, 1893, covering right of R. & D. R. R. to put trestle bents under James River bridge at Lynchburg, same to be removed on or before September 1st, 1895. Approved by order dated November 21, 1893.

J. T. Anthony and the Charlotte, Columbia & Augusta R. R. Co., and Samuel Spencer, F. W. Huidekoper and Reuben Foster, receivers, covering erection of warehouse at Charlotte, N. C., by said Anthony, he to be paid for cost of same by rebate of fifteen (15) per cent. on freight handled by him to and from Charlotte. Agreement dated January 3, 1894. Approved by order dated February 17, 1894. In connection with this agreement, the receivers of the R. & D. R. R. Co. have agreed with the receivers of the Charlotte, Columbia & Augusta R. R. Co. to allow rebates on freight passing over the lines of the Richmond & Danville R. R. handled by said Anthony. This agreement is also dated January 3, 1894. Approved by order dated February 17, 1894.

The H. M. Moses Co., and S. L. Bloomberg, trustee, dated February 1, 1894, lease of brick store, No. 920 east Main street, Richmond, Va., until October 14, 1895.

Richmond Locomotive and Machine Works, dated March 3, 1894, construction of three passenger locomotives. Approved January 27, 1894.

Purnham, Williams & Co., dated March 6, 1894, construction of five passenger locomotives. Approved by order dated January 27, 1894.

National Shoe and Leather Bank, New York, April 16, 1894, three years' lease of offices in New York.

Chesapeake & Ohio Ry. Co. with Samuel Spencer, F. W. Huidekoper and Reuben Foster, receivers of the R. & D. R. R. Co., dated April 17, 1894, use of tracks below drawbridge, Richmond, Va. Approved by order dated March 30, 1894.

James H. Richards, trustee, dated April 21, 1894, lease of first floor front of building No. 32, south Third street, Philadelphia, for three years from May 1, 1894.

Samuel R. Bond and Francis H. Smith, trustees, and

the Penn Mutual Life Insurance Company of Philadelphia, extension until June 1, 1897, of \$75,000 mortgage on office building in Washington, D. C., dated May 5, 1894. Approved by order dated May 2, 1894.

Agreement with the Carolina Central Railroad Co., dated June 29, 1894, covering purchase by the receivers of the Carolina Central Railroad's undivided one-half interest in cotton compress at Charlotte, N. C., for the consideration of \$12,000.00. Approved by order dated June 15, 1894.

These receivers respectfully pray that the court may accept and approve this report, and may enter such order in the premises for the payment of the liabilities of these receivers hereinabove reported, as the court may deem proper.

Respectfully Submitted,

SAMUEL SPENCER,
F. W. HUIDEKOPER,
REUBEN FOSTER,

Receivers

Richmond & Danville Railroad Company.

DISTRICT OF COLUMBIA.

City and County of Washington, } To-wit:

Personally appeared before me, Frederic W. Huidekoper, and made oath, in due form of law, that he is one of the receivers named in the foregoing report; that the matters and things stated in the foregoing report are true of his own knowledge, except where stated on information and belief, and, as to the matters and things so stated, he believes them to be true.

FREDERIC W. HUIDEKOPER.

Sworn to and subscribed before me this 5th day of July, 1894.

{ Notarial }
{ Seal. }

CHAS. P. LEE,
Notary Public.

ORDER ON REPORT OF RECEIVERS.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York,	} In Equity.
<i>vs.</i>	
The Richmond and Danville Railroad Company.	

Come now Samuel Spencer, Frederic W. Huidekoper and Reuben Foster, Receivers heretofore appointed in this cause, and present to the court their report in compliance with the order entered herein the 15th day of June, 1894, requiring said receivers to deliver possession to the purchasers of the railroad property sold by the special masters, and to report their action in this cause, and further requiring said receivers to report their liabilities and assets and file an invoice of material and supplies and a list of their executory contracts.

And it appearing to the court that the said receivers are indebted to sundry persons, as shown by the detailed schedule of their unpaid vouchers, filed with said report, other and above the total amount of their assets, and that the said receivers lack the means to meet the full amount of their indebtedness represented by their pay rolls and salary vouchers for the month of June, 1894, and that said indebtedness is under the terms of the decree of sale entered in this cause on the 13th day of April, 1894, payable by the purchasers at the sale or the approved assigns of such purchasers in addition to the sum or sums bid at such sale.

Now, therefore, it is by the court this 13th day of July, 1894, ordered that Charles H. Coster and Anthony J. Thomas, the purchasers at the sale made by the special masters in this cause under the said decree of sale, or the Southern Railway Company, the approved assign of said purchasers, do pay to the said receivers or deposit to the credit of said receivers in some bank or Trust Company, in the city of New York or the city of Washington, heretofore approved as a depository of such receivers' funds, the sum of thirty-one thousand six hundred and fourteen dollars and ninety-three cents (\$31,614.93) to meet and pay the unpaid vouchers of said receivers for the month of March and prior thereto, as shown by the detailed schedule filed with said report, and also the sum of two hundred and two thousand, two hundred and ninety-five dollars and twenty-five cents (\$202,295.25) to meet and pay such unpaid vouchers for the month of April, as shown by like

schedule filed with said report, said payments or deposits to be made on or before the 25th day of July, inst.

That said purchasers or said Railway Company do in like manner pay or deposit on or before the 10th day of August next, the sum of one hundred and seventy-one thousand, two hundred and thirty-four dollars and thirty-two cents (\$171,234.32) to meet and pay the unpaid vouchers of said receivers for the month of May, as shown by the detailed schedule thereof filed with said report.

And that said purchasers or said Railway Company do in like manner pay or deposit on or before the 25th day of July inst., the sum of fifty thousand dollars (\$50,000) to make good the difference in the cash assets of said receivers to meet their pay rolls for the month of June.

It is further ordered that a copy of this order be served by the said receivers on the said Charles H. Coster and Anthony J. Thomas and the said Southern Railway Company on or before the 20th day of July inst.

N. GOFF,

July 13th, 1894.

U. S. Circuit Judge.

And on another day, to-wit: 9 November, 1894, came the receivers and filed a report, which report, with the Exhibit thereto, is as follows:

REPORT OF RECEIVERS.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN
DISTRICT OF VIRGINIA.

Wm. P. Clyde et al.

vs.

The Richmond and Danville Railroad Company et al.

Central Trust Company of New York

vs.

The Richmond and Danville Railroad Company.

Consolidated Cause.
In Equity.

To the Honorable the Judges of said Court:

Samuel Spencer, Frederic W. Huidekoper and Reuben Foster, receivers heretofore appointed in these consolidated causes, respectfully report to the court as follows:

First. That in compliance with the order appointing them receivers of the Richmond and Danville Railroad

Company they took possession of all the property of said company so far as they were able to do so. That pursuant to subsequent orders of this court in these consolidated causes these receivers have parted with the possession of all property sold by the Special Master herein. That there still remain in the possession of these receivers certain parcels of real estate or interests therein belonging to the Richmond and Danville Railroad Company, which divers creditors claim are not included in the mortgage foreclosed herein, and have not been sold by the Special Masters aforesaid under the decree of sale entered in these causes.

The following is a description of the said real estate and the interests of the said Railroad Company in the respective parcels :

(1) Two lots of land in the city of Richmond, Henrico county, Virginia, known as the "Palmer Lots," one lying at the southwestern intersection of Cary and 19th streets, fronting 44 feet on Cary street and running back within parallel lines, along 19th street 120 feet to Water street.

The second lot adjoining the first, fronting 44 feet on Cary street and running back within parallel lines, bounding on the first lot, parallel with 19th street, 120 feet to Water street.

Each of these lots is improved by a three-story brick building. These were conveyed to the Richmond and Danville Railroad Company by Elizabeth M. Palmer by deed dated Jan. 1st, 1872, duly recorded in the Chancery Court of the city of Richmond, Va. Deed Book 105 A, page 427.

These receivers file herewith a certified copy of said deed, marked "Receivers' Report Exhibit A," and pray that the same may be taken as a part hereof. These lots are specially mentioned in the deed of trust made by the Richmond and Danville Railroad Company to secure six per cent. Consolidated Mortgage Gold Bonds and to secure the issue of \$4,000,000 debenture bonds, dated October 5th, 1874, and February 1st, 1882, respectively, and excepted from the conveyances thereby made, under the name of the "Palmer Lots," and are likewise mentioned and excepted in the subsequent deed of trust made by the said Railroad Company to the Central Trust Company of New York, dated October 22nd, 1886, which has been foreclosed in these causes.

(2) A branch railroad extending from a connection with the Richmond and Danville Railroad at Manchester, Chesterfield county, Va., about one and a half miles, to a point on the south side of the James River, opposite Rockett's wharves, Richmond ;

And a lot at the James River terminus of said railroad, containing about 7 acres of land, and having a wharf front of about 1,100 feet, improved by wharves and other terminal facilities. This property was conveyed to the Richmond and Danville Railroad Company by the Chesterfield Railroad Company by deed dated the 28th day of July, 1858, and duly recorded in the Chesterfield County Court Clerk's Office, Deed Book 54, page 715, and by Andrew Johnson and James Alfred Jones, Special Commissioners, by deed dated July 9th, 1872, and recorded in the Chesterfield County Court Clerk's Office, Deed Book 55, page 350.

The receivers file herewith a duly certified copy of each of said deeds, marked "Receivers' Report Exhibits B and C," and ask that the same be taken as a part hereof.

Under an agreement with said company, dated March 9th, 1874, Allison & Addison occupy a portion of this property with a warehouse for the storage of fertilizer and other freights under a license terminable on 12 months' notice.

Under an agreement with said company, dated January 22nd, 1886, John S. Reese & Co. occupy a portion of this property with a storage warehouse for fertilizers under a license in the form of a lease for a nominal consideration, terminable on 12 months' notice.

Under an agreement with said company, dated August 23rd, 1888, R. F. Williams & Co. occupy a portion of this property with a warehouse for the storage of freight, under a license terminable on 12 months' notice.

This property is excepted both in the mortgage deed of trust of the Richmond and Danville Railroad Company, dated February 1st, 1882, and in that dated October 22nd, 1886. It is included, however, in the mortgage deed of trust dated October 5th, 1874, before referred to.

(3) A tract of land at Wolf Trap Station, on the Richmond and Danville Railroad, in Halifax county, Va., containing 245 $\frac{1}{4}$ acres of land, more or less. This tract of land was acquired for the purpose of establishing a summer resort or sanitarium, adjoining, as it does, that portion of the right of way of the Richmond and Danville Railroad on which is located the Wolf Trap Lithia Springs. The tract includes no part of the right of way of the railroad, and has never been used for railroad purposes. The purchase was made in the name of Wm. H. Payne, Trustee, to whom it was conveyed by R. Brooke and wife by deed dated May 5th, 1892, and recorded in the Clerk's Office of Halifax County Court in Deed Book No. 83, page 427. The said Wm. H. Payne executed in due form a declaration of

trust in favor of the Richmond and Danville Railroad Company.

These receivers file herewith a duly certified copy of said deed from R. Brooke and wife to W. H. Payne, trustee, marked "Receivers' Report, Exhibit D," and ask that the same be taken as a part hereof.

(4) A tract of land near Ruffin Station, on the Piedmont Railroad, in Rockingham county, N. C., known as "Warriner Tract," containing 175 acres of land, more or less. This land was conveyed by R. L. Warriner and others to the Richmond and Danville Railroad Company by deed dated November 13th, 1882, and recorded in the Register's Office for Rockingham county, N. C., in Book 3 T, page 6. These receivers file herewith a duly certified copy of said deed, marked "Receivers' Report, Exhibit E," and ask that the same be taken as a part hereof. This tract was purchased as a borrow or ballast pit, and is under lease to W. B. Burton for one year from April 1st, 1894, at a rental of \$75, to be paid in advance.

(5) Three parcels of land near Air Line Junction, Mecklenburg county, N. C., on the line of the North Carolina Railroad, purchased for the purpose of erecting shops. This land was purchased in the name of A. B. Andrews, trustee, and conveyed to him as follows:

1. One acre by T. L. Rich and wife, by deed dated October 6th, 1890, and recorded in the office of the Register of Deeds for Mecklenburg county, in Deed Book 74, page 249.

2. 39 acres by John E. Oates and wife and others, by deed dated July 31st, 1890, recorded in the said office in Deed Book 76, page 337.

3. 47.99 acres by Geo. S. Hall and wife, by deed dated October 6th, 1890, recorded in said office in Deed Book 76, page 130—making in all 87.99 acres of land.

These receivers file herewith a duly certified copy of each of said deeds, marked "Receivers' Exhibit F 1, F 2, F 3," respectively, and ask that the same be taken as a part hereof.

(6) A tract of land on the southwest side of the North Carolina Railroad, near Air Line Junction, Mecklenburg county, N. C., containing 4,946 acres, and occupied by a cotton compress also belonging to said company. This land was conveyed to the Richmond and Danville Railroad Company by W. W. Phifer, executor of M. M. Phifer, and

others, by deed dated July 2nd, 1890, recorded in the office of Register of Deeds for Mecklenburg county, in Deed Book 81, page 81.

The receivers file herewith duly certified copy of said deed, marked "Receivers' Report, Exhibit G," and ask that the same be taken as a part hereof.

This compress property is under lease to the firm of Geo. H. McFadden & Bro. for a term ending September 1st, 1895, at an annual rental of \$2,100.

(7) A tract of land near the south end of the Long Bridge, over the Potomac River, in Alexandria county, Va., containing 55.22 acres, conveyed by Eppa Hunton, Jr., trustee, to Wm. H. Payne, by deed dated August 20th, 1890, and recorded in the Clerk's Office of Alexandria county, Va., in Deed Book M, No. 4, page 29, *et seq.*, subject, however, to a lease of .58 of an acre from said Payne to the Washington Southern Railway Company. The interest of the Richmond and Danville Railroad Company in this tract is the right to purchase the same through a contract of sale from said Payne at the sum of \$7,000.00, the amount for which he bid in the land at the foreclosure sale made by Eppa Hunton, Jr., trustee.

The receivers file herewith a duly certified copy of the deed from Hunton, trustee, to Payne, marked "Receivers' Report, Exhibit H," and ask that the same be taken as a part hereof.

(8) Four parcels of land adjoining each other and forming together one tract containing 11.95 acres, located near Meadow Station, on the Richmond, York River and Chesapeake Railroad, in Henrico county, Va., and severally conveyed to the Richmond and Danville Railroad Company by E. M. Bradley, trustee, and others, by the following deeds:

Deed dated June 25, 1891, and recorded in the clerk's office of Henrico County Court in Deed Book 146 B, page 400.

Deed dated March 2d, 1892, and recorded in said office in Deed Book 139 A, page 64.

Deed dated September 11th, 1893, and recorded in said office in Deed Book 144 A, page 100.

Deed dated April 18th, 1894, and recorded in said office in Deed Book 145 A, page 233.

These receivers file herewith duly certified copies of all of said deeds marked respectively "Receivers' Report, Exhibit I 1, I 2, I 3 and I 4," and ask that the same be taken as part hereof. This land was purchased for a gravel pit.

(9) Two tracts of land near Meadow Station, on the Richmond, York River and Chesapeake Railroad, in Henrico county, Va., containing together 41.8 acres, conveyed to said Richmond and Danville Railroad Company by G. R. Tabb, trustee, and others, by deed dated May 13th, 1889, recorded in the clerk's office of the Henrico County Court, in Deed Book 127 A, page 369.

The receivers herewith file a duly certified copy of said deed, marked "Receivers' Report, Exhibit J," and ask that the same be taken as a part hereof. This land was purchased for a gravel pit.

(10) All the sand, gravel, stone and other material on several lots or parcels of land, parts of the farm of Henry Daingerfield, containing 6.75 acres in all, located at Springfield, Fairfax county, Va., under and by virtue of three several deed from said Henry Daingerfield to the Richmond and Danville Railroad Company, as follows :

Deed dated November 1st, 1892, and recorded in the clerk's office of Fairfax County Court, in Deed Book O 5, page 273.

Deed dated April 1st, 1893, and recorded in said office in Deed Book O 5, page 362.

Deed dated May 9th, 1894, and recorded in said office in Deed Book Q 5, page 557.

These receivers file herewith duly certified copies of all said deeds, marked respectively "Receivers' Report, Exhibit K 1, K 2, K 3," and ask that the same be taken as part hereof.

(11) One undivided one-third interest in the land and premises known as the Union Station, at Raleigh, Wake county, North Carolina. The record title to this undivided one-third interest stands in the name of A. B. Andrews, trustee, having been conveyed to him in seven parcels by the following deeds :

Deed dated January 18th, 1890, from D. C. Murray and T. H. Murray, commissioners, &c., to the Raleigh and Augusta Air Line Railroad Company, the Raleigh and Gaston Railroad Company, the North Carolina Railroad Company, and A. B. Andrews, trustee, recorded in the office of the Register of Deeds for Wake county, in Book No. 110, page 515.

Deed dated December 30th, 1889, from Annie E. Allen and husband to the same grantees, recorded in said office in Book No. 110, page 423.

Deed Dated October 30th, 1889, from Vermont C. Royster, wife and others to the same grantees, recorded in said office in Book No. 110, page 124.

Deed dated December 30th, 1889, from Henry A. Bland and wife to the same grantees, recorded in said office in Book No. 110, page 424.

Deed dated October 26th, 1889, from Jane C. Yancey to the same grantees, recorded in said office in Book No. 110, page 123.

Deed dated October 28th, 1889, from Mary A. Alston to the same grantees, recorded in said office in Book No. 110, Page 119.

Deed dated February 7th, 1890, from the North Carolina Railroad Company, the Raleigh and Gaston Railroad Company and the Raleigh and Augusta Air Line Railroad Company to A. B. Andrews, trustee, recorded in said office in Book No. 111, page 468.

These receivers file herewith duly certified copies of all said deeds, marked, respectfully, "Receivers' Report, Exhibit L 1, L 2, L 3, L 4, L 5, L 6 and L 7," and ask that the same be taken as part hereof.

(12) A leasehold interest in the Athens Belt Line Railway, located within the city of Athens, Clarke county, Georgia, extending from a point on the line of the Macon and Northern Railroad, near Baldwin street, to a point on the line of the Georgia Railroad, at Broad street in said city, being about one-half a mile in length. This property is held by the Richmond and Danville Railroad Company under an indenture of lease to it from the Athens Belt Line Railway Company, dated December 1st, 1891, a copy of which said lease these receivers herewith file, marked "Receivers' Report, Exhibit M," and ask that the same be taken as part thereof.

Second These receivers further report that they received from Huidekoper and Foster, their predecessors as receivers of the Richmond and Danville Railroad Company, certain stocks and bonds which the latter had found in the treasury of the company and received from it.

The stocks and bonds so received are still in the possession of these receivers, and the following is a description of the same and the ownership thereof, so far as these receivers have been able to ascertain:

STOCK.

Company.	Par Value.
Hartwell R. R. Co.,	\$13,000 00
Clarksville and North Carolina R. R. Co.,	100,000 00
Danville and New River R. R. Co.,	1,700 00
Danville and Western R. R. Co.,	368,600 00

Elberton Air Line R. R. Co.,	200 00
High Point, Randleman, Asheboro and Southern R. R. Co.,	212,500 00
Lawrenceville R. R. Co.,	75 00
Milton and Southerlin R. R. Co.,	36,400 00
Macon and Northern R. R. Co.,	500,000 00
Northwestern North Carolina R. R. Co.,	1,172,900 00
Norfolk and Carolina R. R. Co.,	295,800 00
Oxford and Clarksville R. R. Co.,	890,000 00
Piedmont R. R. Co.,	10,500 00
State University R. R. Co.,	16,800 00
Yadkin R. R. Co.,	462,750 00
Charlotte, Columbia and Augusta R. R. Co.,	10,000 00
North Carolina State Exposition,	800 00
Piedmont Exposition,	1,000 00
Richmond and West Point Terminal Railway and Warehouse Co., preferred scrip,	33 33
Richmond and West Point Terminal Railway and Warehouse Co., common stock,	560 00
Yorktown Centennial Association,	1,000 00

The foregoing stocks appear by the accounts of the Richmond and Danville Railroad Company to belong absolutely to it.

The following stocks, which likewise came into the possession of these receivers from their predecessors, appear by the accounts of the Richmond and Danville Railroad Company to have been delivered to it by the Atlanta and Charlotte Air Line Railroad Company, under the agreement between said companies, dated March 26th, 1881, and to be subject to the terms of said agreement, and therefore to be deliverable to the purchasers of that agreement as incidental and apportioned thereto, to-wit :

Company.	Par Value.
Atlanta and Richmond Air Line R. R. Co.,	\$470,000 00
Elberton Air Line R. R. Co.,	100,000 00
Lawrenceville Railroad Co.,	22,525 00
Roswell Railroad Co.,	20,100 00

The following stocks, which were likewise received by these receivers from their predecessors, appear from the books of the Richmond and Danville Railroad Company to have been delivered to it by the Charlotte, Columbia and Augusta Railroad Company under the operating agreement or lease between said companies, dated May 1st, 1886 :

Company.	Par Value.
Cheraw & Chester R. R. Co.,	\$50,400 00
Chester & Lenoir Narrow Gauge R. R. Co.,	165 85
Charlotte, Columbia & Augusta R. R. Co.,	103,900 00
North Carolina State Exposition,	100 00

The following stocks, which were likewise received by these receivers from their predecessors, do not appear on the books of the Richmond and Danville Railroad Company, but seem to be the property of the Virginia Midland Railway Company, and should be returned to that company, viz. :

Company.	Par Value.
Virginia Midland Railway Co.,	\$20,150 00
Virginia Midland Railway Co., first preferred,	2,618 34

BONDS.

Company.	Par Value.
Richmond & West Point Ter. R'y. & Warehouse Co. 5 per cent.,	\$100 00
Roanoke Valley Railroad bonds,	23,500 00
Hall County, Georgia, 8 per cent. bonds,	57,100 00
Also	
Chester & Lenoir Narrow Gauge R. R. 1st Mort. 7 per cent. bonds,	500 00
Cheraw & Chester R. R. 1st Mort. 7 per cent. bonds,	500 00

The two bonds last mentioned seem to have come into the possession of the Richmond and Danville Railroad Company under the said operating agreement or lease with the Charlotte, Columbia and Augusta Railroad Company.

Also,	
Blue Ridge Railway Company, 7 per cent. bonds,	\$197,000 00

These seem to have come into the possession of The Richmond and Danville Railroad Company through the operating agreement or lease between it and the Columbia and Greenville Railroad Company, dated May 1st, 1886.

Also,	
Georgia Pacific Railway mortgage income bonds,	\$437,430 65
Georgia Pacific Railway consolidated second mortgage bonds,	1,000 00

These bonds seem to have come into the possession of

the Richmond and Danville Railroad Company under the lease to it from the Georgia Pacific Railway Company, December 19th, 1888. The accounts of the Richmond and Danville Railroad Company show an indebtedness to it from the Georgia Pacific Railway Company of \$3,691,365.01, on which indebtedness, however, there should properly be credited the value of the following securities received and used by the Danville Company as its own, but for which no credit was given the Georgia Pacific Company in the said accounts, to-wit :

Georgia Pacific Railway Company 5 per cent.	
Equipment Mortgage Bonds,	\$253,000
Georgia Pacific Railway Company Consolidated Second Mortgage Bonds,	385,000
Georgia Pacific Railway Company 6 per cent.	
Equipment Mortgage Bonds,	499,000

The receivers likewise received from their predecessors the following certificates and other evidences of indebtedness, to-wit :

Certificate of indebtedness of the North Eastern Railroad of Georgia, issued under an agreement between that company and the Richmond and Danville Railroad Company, dated June 14th, 1886, \$45,420.59.

Note of the North Eastern Railroad of Georgia, \$23,491.74.

Certificates of indebtedness of the Charlotte, Columbia & Augusta Railroad Company, issued under the said operating agreement or lease between that company and the Richmond and Danville Railroad Company, \$216,984.79.

Certificates of indebtedness of the Columbia & Greenville Railroad Company, issued under the said operating agreement between that company and the Richmond and Danville Railroad Company, \$614,608.54.

Certificates of indebtedness of the North Western North Carolina Railroad Company, issued under the operating agreement or lease between that company and the Richmond and Danville Railroad Company, dated July 24th, 1890, \$456,168.07.

Certificates of indebtedness of the Richmond & Mecklenburg Railroad Company, issued under the operating agreement or lease between that company and the Richmond and Danville Railroad Company, dated April 5th, 1883, \$72,048.37.

Certificates of indebtedness of the Western North Carolina Railroad Company, issued under the operating agreement or lease between that company and the Rich-

mond and Danville Railroad Company, dated April 30th, 1886, \$1,179,755.29.

Notes of the Richmond & West Point Terminal Railway and Warehouse Company, \$179,200.

Note of the Roswell Railroad Company, dated March 1st, 1883, \$4,000.

Note of the Lawrenceville Railroad Company, dated March 1st, 1893, \$8,000.

Also uncanceled coupons aggregating \$107,835, from the first mortgage bonds of the Northeastern Railroad Company (of Georgia), secured by a first mortgage deed of trust from said company to R. L. Moss and R. K. Reaves, trustees, bearing date May 1st, 1876. These coupons were taken up and held uncanceled by the Richmond and Danville Railroad Company, in accordance with the provisions of the eleventh article of the operating agreement between it and the said Northeastern Railroad Company, dated June 14th, 1886.

These receivers further report that, to the best of their judgment, information and belief, none of the above-mentioned stocks in their hands have any income-producing or intrinsic value, and these receivers further report that, to the best of their information and judgment, the notes and certificates of indebtedness above mentioned cannot be collected, their respective makers being insolvent. The indebtedness represented by the certificates, however, constitute a lien in the nature of a mortgage (but subject to existing mortgages) on the property mentioned in the several operating agreements or leases between the respective makers of the certificates and the Richmond and Danville Railroad Company. The certificates, therefore, although not collectible in money, may have some value for sale.

That the predecessors of these receivers, Huidekoper and Foster, in order to maintain their possession of the several operated lines, parts of the Richmond and Danville system, purchased with the money of the receivership, derived from the operation of the main line of the Richmond and Danville Railroad, certain judgments and decrees against the several companies owning said operated lines, respectively. The judgments and decrees purchased were formally assigned to said receivers and entered to their use on the records of the respective courts in which the same were rendered, and in those cases where the subsequent earnings of the property of the company against which the judgment or decree was rendered were not sufficient to reimburse said receivers for their expenditures on its account, said judgments and decrees still stand in the name of said

receivers unreleased and unsatisfied. The following is a list of the judgments and decrees so purchased :

(1) Judgment in case of Joseph Amey vs. The Georgia Pacific Railway Company, in the Superior Court of Douglas county, Georgia, \$650, with interest from July 14, 1892, and costs.

(2) Decree for costs against the Georgia Pacific Railway Company in case of said Company vs. M. D. Wilks, No. 124, in Chancery Court for Fayette county, Alabama, \$264.37.

(3) Decree for costs against the Georgia Pacific Railway Company in case of said Company vs. Caleb Ehl, No. 125, in Chancery Court for Fayette county, Alabama, \$240.

(4) Decree for costs against the Georgia Pacific Railway Company in case of said Company vs. O. G. Harbin, No. 127, in Chancery Court for Fayette county, Alabama, \$185.35.

(5) Decree for costs against the Georgia Pacific Railway Company in case of said Company vs. A. T. Handley, in Chancery Court for Walker county, Alabama, \$78.35.

Like decree in the same court in case of said Company vs. E. W. Miller, administrator, and others, \$75.70.

(6) Judgment against the Georgia Pacific Railway Company in the case of Jessie W. Nealy vs. said Company, in the Superior Court of Fulton county, Georgia, on account of damages done plaintiff's land in the construction of the defendant's railway, for \$750, with interest from May 30th, 1892, and costs.

(7) Judgment against the North Western North Carolina Railroad Company in the case of L. S. Reece vs. said Company, in the Superior Court of Surry county, North Carolina, to recover the value of plaintiff's land taken by the defendant for its railroad, for \$250 damages and \$129.15 costs.

(8) Judgment against the North Western North Carolina Railroad Company in the case of S. J. Atkinson and Aaron Whitaker vs. said Company, in the Superior Court of Surry county, North Carolina, to recover the value of plaintiffs' land taken by the defendant for its railroad, for \$600 damages and \$126.50 costs.

(9) Judgment against the North Carolina Midland Railroad Company, in the case of Mary C. Hanes vs. said Company, in the Superior Court of Forsyth county, North

Carolina, to recover for land of plaintiff taken for defendant's railroad, for \$1,100 damages and \$59.45 costs.

Third. These receivers further report that to several of the classes of bonds pledged under the mortgage deed of trust of the Richmond and Danville Railroad Company to the Central Trust Company of New York, trustee, dated October 22d, 1886, mentioned in the proceedings in these causes, there are attached coupons which fell due prior to March 31st, 1892, the date of the maturity of the last coupon paid on the consolidated bonds of the Richmond and Danville Railroad Company secured by said deed of trust under which said several classes of bonds were pledged and deposited with the Central Trust Company of New York, as trustee.

The following is a list of such coupons :

- July 1, 1888, to March 31, 1892
(both dates inclusive), on \$150,000 Elberton Railroad Company First Mortgage 7 per cent. bonds.
- Jan. 1, 1891, to March 31, 1892
(both dates inclusive), on \$30,000 Lawrenceville Railroad Co. First Mortgage 7 per cent. bonds.
- March 1, 1880, to March 31, 1892
(both dates inclusive), on \$16,200 Hartwell R. R. Company First Mortgage 10 per cent. bonds.
- July 1, 1882, to March 31, 1892
(both dates inclusive), on \$26,000 Milton & Sutherlin R. R. Co. First Mortgage 8 per cent. bonds.
- Jan. 1, 1888, to March 31, 1892
(both dates inclusive), on \$300,000 Statesville & Western R. R. Co. First Mortgage 6 per cent. bonds.
- Jan. 1, 1888, to March 31, 1892
(beth dates inclusive), on \$195,000 Oxford & Henderson R. R. Co. First Mortgage 6 per cent. bonds.
- Oct. 1, 1889, to March 31, 1892
(both dates inclusive), on \$402,000 High Point, Randleman, Asheboro & Southern R. R. Co. First Mortgage 6 per cent. bonds.
- April 1, 1891, to March 31, 1892
(both dates inclusive), on \$120,000 Yadkin Railroad Co. 6 per cent. bonds.

- October 1, 1891, to March 31, 1892
(both dates inclusive), on \$495,000 Yadkin
Railroad Co. 6 per cent. bonds.
- Jan. 1, 1892, to March 31, 1892
(both dates inclusive), on \$390,000 North
Carolina Midland R. R. Co. First Mortgage 6
per cent. bonds.
- Oct. 1, 1891, to March 31, 1892
(both dates inclusive), on \$552,000 Danville
& Western R. R. Co. First Mortgage 6 per
cent. bonds.
- April 1, 1889, to March 31, 1892
(both dates inclusive), on \$103,000 Laurens
R. R. Co. First Mortgage 6 per cent. bonds.
- Oct. 1, 1889, to March 31, 1892
(both dates inclusive), on \$47,000 Laurens R.
R. Co. First Mortgage bonds.

These receivers are advised that under the terms of the pledge the Richmond and Danville Railroad Company was entitled and should have received from said trustee all of said coupons so maturing up to March 31, 1892, upon the payment of the interest coupons due on the said consolidated mortgage bonds. The Richmond and Danville Railroad Company did, in fact, credit itself with the amount of said coupons as they severally became due in its several accounts with all of said companies, except as to the coupons on the bonds of the Statesville and Western Railroad Company and the Oxford and Henderson Railroad Company and Laurens Railroad Company. The court in said decree reserved for further consideration all questions as to the disposition of such coupons. These receivers are informed that the said coupons still remain in the custody of the Central Trust Company of New York, and they respectfully ask for the instruction of the court whether any action shall be taken by them with regard to the said coupons, and also what disposition shall be made of them should they be surrendered to the receivers.

Fourth. Prior to the time of the appointment of receivers by this court, the Richmond and Danville Railroad Company had deposited with the National Bank of Charlotte 167 first mortgage bonds of the North Western North Carolina Railroad Company, to secure compliance with the terms of the lease to it of the North Carolina Railroad, as required by said lease. By reason of depreciation in value of said bonds of the North Western North Carolina Railroad Company, the receivers of this court were required to give new security under said lease, and were authorized by

orders of this court, passed in these causes the 17th day of February and 3d day of March, 1894, to make and deposit with the North Carolina Railroad Company their two receivers' certificates in the amount of security required under said lease. By the decree of sale entered in these causes, the purchasers of the said leasehold of the said Richmond and Danville Railroad Company in the North Carolina Railroad are required to make good said lease and relieve these receivers from all liability on their said receivers' certificates. The said 167 bonds of the North Western North Carolina Railroad Company are therefore released from the pledge upon which they were deposited by the Richmond and Danville Railroad Company.

Fifth. Under the provisions of the Equipment Sinking Fund Five Per Cent Mortgage of the Richmond and Danville Railroad Company to the Central Trust Company of New York, trustee, dated September 3d, 1889, the Richmond and Danville Company, at the time of the appointment of receivers by this court, June 15th, 1892, was entitled to receive from the said trustee (by virtue of deposits of money made by said Railroad Company with said trustee) thirty-one of the bonds secured by said mortgage, each for the sum of \$1,000, and aggregating \$31,000, leaving a balance of \$300 unfunded.

By virtue of like deposits made by Huidekoper and Foster, receivers, from June 16th, 1892, and July 31st, 1893, there became issuable by said trustee two hundred and twenty more of said bonds, aggregating \$220,000, and by like deposits made by these receivers from July 31st, 1893, to June 30th, 1894, there have become issuable one hundred and forty-three more of said bonds, aggregating \$143,000, leaving a balance of \$500 unfunded. Of the bonds issuable by the said trustee, as above stated, the trustee has actually issued sixteen, which it delivered to Huidekoper and Foster, receivers, upon the first deposit made by them July 1st, 1892. These sixteen bonds are now in the possession of your present receivers. The issuance of the rest of the said bonds has never been requested by your receivers, because by such issuance the semi-annual payments to the sinking fund under said mortgage would be increased, without any compensating benefit to the receivership. The sale of equipment covered by said Equipment Mortgage under the decree of foreclosure and sale heretofore entered in this cause, was made subject to the said Equipment Mortgage. The receivers are advised and believe that the purchasers at such sale took such equipment subject only to the equipment bonds theretofore issued thereon, and they ask to be allowed to close this account on that basis.

Sixth. Under the provisions of the Georgia Pacific Railway Company five per cent. equipment mortgage between the Georgia Pacific Railway Company, the Richmond and Danville Railroad Company and the Central Trust Company of New York, trustee, dated July 17th, 1889, the Richmond and Danville Railroad Company had, before the appointment of receivers by this court, become entitled to receive from the said trustee (by virtue of the deposit with the trustee of equipment and car trust certificates) bonds secured by said mortgage to the amount of \$333,000. Of this amount the said Danville Company had received from the trustee bonds to the amount of \$232,000. The right to receive the remaining \$101,000 was subsequently released to the said trustee, in compliance with the order of this court entered April 26th, 1893, on the intervening petition of the trustee in this cause. The adjustment under said order of court left a balance of \$854.56 to be funded in said equipment bonds on account of deposits made by the Richmond and Danville Company before the receivership. After the appointment of Huidekoper and Foster as receivers of this court, said receivers expended of the funds of their receivership up to July 31st, 1893, the sum of \$94,868.16 for the purchase and deposit with said trustee of the equipment and car trust certificates, as provided in said equipment mortgage; and by virtue of such deposit there became issuable to said receivers bonds of the issue secured by said mortgage to the amount of \$111,000, leaving a balance of \$518.16 to be funded. Under the provisions of the Georgia Pacific Railway Company six per cent. equipment mortgage, dated May 1st, 1891, between the Georgia Pacific Railway Company, the Richmond and Danville Railroad Company and the Central Trust Company of New York, trustee, the Richmond and Danville Railroad Company, at the time of the appointment of receivers by this court, had received all bonds which it was entitled to receive by virtue of the deposit of equipment trust certificates or the purchase of equipment, leaving a balance to be funded of \$250. The receivers of this court, after their appointment, expended of the funds of their receivership \$41,500 for the purchase and deposit with the trustee of equipment trust certificates as provided in said mortgage; and by virtue of such deposit there became issuable to them bonds of the issue secured by said mortgage to the amount of \$46,000, leaving a balance of \$100 to be funded. The bonds issuable as above stated under each of said Georgia Pacific Railway Company's equipment mortgages have not been demanded of the respective trustees, because by their issuance the semi-

annual sinking fund payments under said mortgages, respectively, would be increased without any compensating advantage to the receivership. The operation of the property of the Georgia Pacific Railway Company by the receivers of this court, without including the expenditures above stated in connection with the equipment and car trusts, resulted in a loss of \$142,983.41.

Seventh. Before the appointment of receivers by this court, the Richmond and Danville Railroad Company had borrowed from banks, trust companies and individuals in the city of New York and elsewhere large sums of money upon its promissory notes secured by collateral. The several loans, with the securities pledged to secure each, have been heretofore reported to the court by the predecessors of these receivers. By order entered herein on the 6th day of August, 1892, upon the petition of the Richmond and Danville Railroad Company, the company was authorized to enter into agreements with the then holders of the said loans for the extension of the time of payment of the same for two years, and, in consideration of such extension, to agree to pay certain commissions on each loan so extended. With few exceptions, the holders of said loans entered into the agreements of extension authorized by said order. Subsequently, the Reorganization Committee of the Richmond and West Point Terminal Railway and Warehouse Company, composed of C. H. Coster, chairman, George Sherman and Anthony J. Thomas, acquired by purchase all the said collateral loans; and the time having expired for which the payments of the same had been extended, the said committee, after due notice to these receivers, proceeded to sell at public auction, in the city of New York, all the securities so pledged to secure the several loans. These receivers file herewith, marked "Receivers' Report, Exhibit N," a copy of the account of the sales so made, furnished them by said committee, and also the certificate of said committee showing the application of the proceeds of sale to the indebtedness held by the committee and the balance of the indebtedness claimed to be due, \$240,555.05. These receivers state, upon information and belief, that the prices at which the securities were sold, as shown by the said account, were fully equal to the value of the securities.

Eighth. That prior to the appointment of the receivers of the Richmond and Danville Railroad Company by this court, said company, to indemnify certain sureties on bonds of the said company, given to release attachments and supersede judgments in certain cases in the State of

Georgia, had deposited with Inman, Swann & Co., of New York, the following collaterals :

\$32,000 Richmond and Danville Equipment 5 per cent bonds.

\$38,000 Georgia Pacific Equipment 6 per cent. bonds.

\$16,000 State of Georgia 3½ per cent. bonds.

600 shares East Tenn., Va. & Ga. R. R. Co. 1st preferred stock.

2,000 shares East Tenn., Va. & Ga. R. R. Co. 2d preferred stock.

With Samuel N. Inman, Atlanta, Ga. :

\$7,000 East Tenn., Va. & Ga. R. R. Co. 5 per cent. extension bonds.

With H. T. Inman, of Atlanta, Ga. :

\$25,000 State of Georgia 3½ per cent. bonds.

and that of the collateral so deposited only the \$32,000 Richmond and Danville Railroad Company equipment bonds and the \$38,000 Georgia Pacific Railway Company equipment bonds then belonged to the Richmond and Danville Railroad Company. The rest belonged to the Richmond and West Point Terminal Railway and Warehouse Company.

That subsequently, and since the appointment of the receivers by this court, the Richmond and West Point Terminal Railway and Warehouse Company brought suit on the law side of this court for the value of said collateral so loaned to the Richmond and Danville Railroad Company, and recovered a judgment for the value of the same, which judgment has been proved before the special masters in these proceedings. These receivers are advised that, by reason of such action of the Richmond and West Point Terminal Railway and Warehouse Company in electing to recover at law the value of such collateral, the title to the same became vested in the Richmond and Danville Railroad Company. That since the appointment of the receivers by this court all the bonds (to indemnify the sureties, on which the collateral was deposited), have been released either by dismissal or compromise of the suit in which such bond was filed, or by payment of the judgment recovered therein by the receivers of this court, so that said collateral is now free from the pledge upon which it was deposited.

The above-mentioned securities, as these receivers are informed and believe, since the discharge of the bonds for the security of the sureties on which they were pledged as aforesaid, have been delivered by the respective pledgees to

C. H. Coster, A. J. Thomas and George Sherman, the re-organization committee of the Richmond and West Point Terminal Railway and Warehouse Company, and these receivers are informed that said committee have sold the same at public auction and claim the right to retain the proceeds of such sales and apply them upon the said balance of \$240,555.05, claimed to be due, as stated in the next preceding section of this report. These receivers file herewith, marked "Receivers' Exhibit O," copies of two letters received by them from said committee, dated respectively October 3d, 1894, and October 12th, 1894, which the receivers pray may be taken as part hereof. Before the making of the sales referred to in said letters these receivers made formal demand on the said committee for the delivery of the securities as assets of the receivership, and they have refused to recognize the right of the committee to sell the said securities or to apply the proceeds thereof as claimed in said letters without the instruction and authority of the court.

Ninth. The decree of sale entered in this cause provides that nothing therein "shall be construed to give to the purchasers the \$1,000,000 of Piedmont Railroad bonds." The bonds referred to consist in \$500,000 of six per cent. first mortgage bonds secured by mortgage deed of trust to the Central Trust Company of New York, trustee, dated April 1st, 1888, and \$500,000 of six per cent. second mortgage bonds secured by like mortgage of the same date to the same trustee. The accounts of the Richmond and Danville Railroad Company show that these bonds were acquired by that company October 6th, 1888, and are all pledged and deposited with the Central Trust Company of New York, as trustee, under the mortgage deed of trust from the Richmond and Danville Railroad Company, dated October 5th, 1874, to secure the \$6,000,000 of six per cent. consolidated first mortgage bonds, provided to be issued thereunder, and the claim is made by the holders of the said consolidated six per cent bonds, and also of the consolidated five per cent. bonds foreclosed in this action, that such Piedmont bonds and coupons are held as mere muniments and aids to title precisely as though they were bonds issued directly by said Richmond and Danville Railroad Company, and that said last named corporation has no right of possession of any such bonds or any interest therein which is subject to levy or sale.

Tenth. These receivers respectfully ask the direction of the court as to what disposition, if any, shall be made

of the property in their hands as herein reported, and as to what action, if any, they shall take in regard to the several matters herein stated.

Respectfully submitted,

SAMUEL SPENCER,
F. W. HUIDEKOPER,
REUBEN FOSTER,

Receivers.

HUGH L. BOND, JR.,

Solicitor for Receivers.

DISTRICT OF COLUMBIA. }
City of Washington, } To-wit :

Reuben Foster, being duly sworn according to law, deposes and says that he is one of the receivers named in the foregoing report, and that the matters and things therein stated are true, to the best of his knowledge, information and belief.

REUBEN FOSTER.

Subscribed and sworn to before me this seventh day of November, A. D. 1894.

{ Notarial
Seal. }

CHAS. P. LEE,
Notary Public.

EXHIBIT O.

New York, October 3rd, 1894.

RICHMOND AND DANVILLE RAILROAD COMPANY.

Messrs. Samuel Spencer, F. W. Huidekoper, Reuben Foster, Receivers :

Dear Sirs :

Referring to our letter of Sept. 26th, 1894, showing due us on certain loans a balance, as of Sept. 26, 1894, of
\$240,555 05
we do deduct proceeds of :

\$32,000	Richmond & Danville R. R. Co. Equipment Sinking Fund 5% Bonds at 95,	\$30,400 00
38,000	Georgia Pacific Ry. Co. Equipment Sinking Fund 6% Bonds at 92,	34,960 00
		<hr/> \$65,360 00
	Less auctioneers' charges, and expenses,	85 80
		<hr/> \$65,274 20
	Less 5 days' interest at 6%,	54 39
		<hr/> 65,219 81
	Leaving a balance due us, as of Sept. 26, 1894, of,	\$175,335 24

Yours very truly,

C. H. COSTER,
GEORGE SHERMAN,
ANTHONY J. THOMAS,
Committee.

p. C. H. COSTER.

New York, October 12, 1894.

RICHMOND AND DANVILLE RAILROAD COMPANY,

Messrs. Samuel Spencer, F. W. Huidekoper, Reuben Foster, Receivers:

Gentlemen:

Referring to our notices of September 17th and 26th, and October 3rd and 4th, we append at the foot hereof a transcript of the auctioneers' account of sale of securities specified in our notice of October 4th, showing proceeds of \$2,580, from which we deduct auctioneers' charges and expenses, \$22, leaving net proceeds \$2,558. The balance due us, as per our statement of September 26th, was \$175,335.24, and we apply the above sum of \$2,558 on account of same.

TRANSCRIPT OF AUCTIONEERS' ACCOUNT.

New York, Oct. 10th, 1894.

Sold at auction this day for account C. H. Coster,
Chairman:

\$7,000 East Tennessee, Virginia & Georgia Ry. Co. 1st Extension Mortgage Bonds, no assessment paid, at 30,	\$2,100 00
600 Shares East Tennessee, Virginia & Geor- gia Ry. Co. 1st Preferred Stock, no assess- ment paid, at 55 cents per share,	330 00
2,000 Shares East Tennessee, Virginia & Geor- gia Ry. Co. 2nd Preferred, no assessment paid, at 7½ cents per share,	150 00
	<hr/>
	\$2,580 00

Yours very truly,

C. H. COSTER,
GEORGE SHERMAN,
ANTHONY J. THOMAS,
Committee.

By C. H. COSTER,
Chairman.

And on another day, to-wit: 9th November, 1894, the
following order of sale was entered:

ORDER OF SALE ON REPORT OF RECEIVERS.

CIRCUIT COURT OF THE UNITED STATES FOR THE EAST-
ERN DISTRICT OF VIRGINIA.

William P. Clyde and others	}	Consolidated Cause. In Equity.
<i>vs.</i>		
Richmond and Danville Railroad Company and others.		
Central Trust Company of New York		
<i>vs.</i>		
Richmond & Danville Railroad Com- pany.		

Now, on this 9th day of November, 1894, come again
the parties, by their respective solicitors, and come also
the receivers, Samuel Spencer, Frederic W. Huidekoper and
Renben Foster, heretofore appointed in this cause, and file
their written report herein, showing divers parcels of real

estate or interest therein, in which the said Richmond and Danville Railroad Company holds, or did hold, some legal or equitable title, and which interests in real estate, some creditors claim, are not embraced in the mortgage foreclosed in this action, or embraced within the property heretofore sold by the special masters, and also reporting a list of stocks, certificates of indebtedness, bonds and coupons belonging to the said Richmond and Danville Railroad Company or the said receivers, or in which they have certain interests or equities of redemption, some of which stocks, bonds and coupons are in the possession and custody of said receivers and some of which are not; said receivers, in said report, also praying the court for instructions as to the sale or disposition of the said corporate interests in said parcels of real estate and the said stocks, bonds and other choses in action, whatever they may be, to the end that their trust in this cause may be wound up.

The court thereupon orders and decrees as follows:

In order to wind up the trust of the said receivership, said Samuel Spencer, Frederic W. Huidekoper and Reuben Foster be, and the same are hereby, authorized and directed, upon the notice, terms and conditions hereinafter set forth, to offer at public sale, to the highest bidder for cash, all the right, title and interest, legal and equitable, of the said Richmond and Danville Railroad Company and the said receivers in and to the following parcels of real estate, viz.:

(1) Two lots of land in the city of Richmond, Henrico county, Virginia, known as the "Palmer Lots," one lying at the southwestern intersection of Cary and Nineteenth streets, fronting forty-four (44) feet on Cary street, and running back within parallel lines along Nineteenth street, one hundred and twenty (120) feet to Water street.

The second lot adjoining the first, fronting forty-four (44) feet on Cary street, and running back within parallel lines bounding on the first lot parallel with Nineteenth street, one hundred and twenty (120) feet to Water street.

Being the same property conveyed to the Richmond and Danville Railroad Company by Elizabeth M. Palmer by deed dated January 1, 1872, duly recorded in the Chancery Court of the city of Richmond, Virginia, Deed Book 105 A, page 427.

(2) A branch railroad extending from a connection with the Richmond and Danville Railroad at Manchester, Chesterfield county, Virginia, about one and a half miles to a point on the south side of the James river, opposite Rockett's Wharves, Richmond. Also

A lot at the James river terminus of said railroad,

containing about seven (7) acres of and having a wharf front of about eleven hundred (1,100) feet, improved by wharves and other terminal facilities, being the same real estate conveyed to the Richmond and Danville Railroad Company by the Chesterfield Railroad Company by deed dated July 28, 1858, and duly recorded in the Chesterfield County Court Clerk's Office, Deed Book 54, page 715, and by Andrew Johnson and James Alfred Jones, special commissioners, by deed dated July 9, 1872, and recorded in Chesterfield County Court Clerk's Office, Deed Book 55, page 350.

(3) A tract of land at Wolf Trap station, on the Richmond and Danville Railroad, in Halifax county, Virginia, containing about two hundred and forty-five and one-quarter ($245\frac{1}{4}$) acres of land, being the same property conveyed by R. Brooke and wife to William H. Payne, trustee, by deed dated May 5, 1892, and recorded in the clerk's office Halifax County Court in Deed Book 83, page 427.

(4) A tract of land near Ruffin station, on the Piedmont Railroad, in Rockingham county, North Carolina, known as the "Warriner Tract," containing one hundred and seventy-five (175) acres of land, more or less, being the same land conveyed by R. L. Warriner and others to the said Richmond and Danville Railroad Company by deed dated November 13, 1882, and recorded in the Register's Office for Rockingham county, North Carolina, in Book 3 T, page 6.

(5) Three parcels of land near Air Line Junction, Mecklenburg, North Carolina, on the line of the North Carolina Railroad, being the same property conveyed to A. B. Andrews, as trustee, by deeds executed by the following persons :

T. L. Rich and wife. Deed dated October 6, 1890, recorded in the office of the Register of Deeds for Mecklenburg county in Deed Book 74, page 249.

Deed by John E. Oates and wife, dated July 31, 1890, recorded in the same office in Deed Book 76, page 337.

Deed by George S. Hall and wife, dated October 6, 1890, recorded in said office in Deed Book 756, page 130.

(6) A tract of land on the southwest side of the North Carolina Railroad, near Air Line Junction, Mecklenburg county, North Carolina, containing four and 946-1000 (4.946) acres, being the same property conveyed to the Richmond and Danville Railroad Company by W. W. Phifer, executor of M. M. Phifer, and others, by deed dated

July 2, 1890, recorded in the office of the Register of Deeds for Mecklenburg county, in Deed Book 81, page 81.

(7) A tract of land near the south end of the Long bridge over the Potomac river, in Alexandria county, Virginia, containing about fifty-five and 22-100 (55.22) acres, being the same property conveyed by Eppa Hunton, Jr., trustee, to William H. Payne, trustee, by deed dated August 20, 1890, and recorded the clerk's office of Alexandria county, Virginia, in Deed Book M, No. 4, page 29.

(8) Four parcels of land adjoining and forming together one tract, containing eleven and 95-100 (11.95) acres, located near Meadow station, on the Richmond, York River and Chesapeake Railroad, in Henrico county, Virginia, being the same property conveyed to the said Richmond and Danville Railroad Company by E. M. Bradley, trustee, and others, by the following deeds :

Deed dated June 25, 1891, and recorded in the clerk's office of Henrico County Court, in Deed Book 146 B, page 400.

Deed dated March 2, 1892, and recorded in said office in Deed Book 139 A, page 64.

Deed dated September 11, 1893, and recorded in said office in Deed Book 144 A, page 100.

Deed dated April 18, 1894, and recorded in said office in Deed Book 145 A, page 233.

(9) Two tracts of near the aforesaid Meadow station, in Henrico county aforesaid, containing together forty-one and eight-tenths (41.8) acres, conveyed to said Richmond and Danville Railroad Company by G. R. Tabb, trustee, and others, by deed dated May 13, 1889, recorded in the clerk's office of Henrico County Court in Deed Book 127 A, page 369.

(10) All the sand, gravel, stone and other materials on the several lots or parcels of land, parts of the farm of Henry Daingerfield, containing six and 75-100 (6.75) acres in all, located at Springfield, Fairfax county, Virginia, under and by virtue of three deeds from said Daingerfield to the said Richmond and Danville Railroad Company, as follows :

Deed dated November 1, 1892, recorded in the clerk's office of Fairfax County Court in Deed Book O 5, page 273.

Deed dated April 1, 1893, and recorded in said office in Deed Book O 5, page 362.

Deed dated May 9, 1894, and recorded in said office in Deed Book Q 5, page 557.

(11) The undivided third interest in the lands and premises known as the Union Station, at Raleigh, Wake county, North Carolina, being the same property and interest conveyed to A. B. Andrews, trustee, by the following seven deeds :

Deed dated January 18, 1890, from D. C. Murray and T. H. Murray, commissioners, to the said Andrews and others, and recorded in the office of the Register of Deeds for Wake county, in Book No. 110, page 515.

Deed dated December 30, 1889, from Annie E. Allen and husband to the said Andrews and others. Recorded in said office in Book No. 110, page 423.

Deed dated October 30, 1889, from Vermont C. Royster, wife and others, to the same grantees. Recorded in said office in Book No. 110, page 124.

Deed dated December 30, 1889, from Henry A. Bland and wife to the same grantees. Recorded in said office in Book 110, page 424.

Deed dated October 26, 1889, from Jane C. Yancey to the same grantees. Recorded in said office in Book No. 110, page 123.

Deed dated October 28, 1889, from Mary A. Alston to the same grantees. Recorded in said office in Book No. 110, page 119.

Deed dated February 7, 1890, from the North Carolina Railroad Company and others to A. B. Andrews, trustee. Recorded in said office in Book 111, page 468.

(12) A leasehold interest in the Athens Belt Line Railroad, located in Athens, Clarke county, Georgia, as evidenced by an indenture of lease from the said Athens Belt Line Railroad, dated December 1, 1891.

And also all the right, title and interest of the Richmond and Danville Railroad Company in and to the following stocks, certificates of indebtedness, bonds and coupons :

(a) STOCKS.

Company.	Par Value.
Hartwell R. R. Co.,	\$ 13,000 00
Clarksville and North Carolina R. R. Co.,	100,000 00
Danville and New River R. R. Co.,	1,700 00
Danville and Western R. R. Co.,	368,600 00
Elberton Air Line R. R. Co.,	200 00
High Point, Randleman, Asheboro and Southern R. R. Co.,	212,500 00
Lawrenceville R. R. Co.,	75 00

Milton and Southern R. R. Co.,	36,400 00
Macon and Northern R. R. Co.,	500,000 00
North Western North Carolina R. R. Co.,	1,172,900 00
Norfolk and Carolina R. R. Co.,	295,800 00
Oxford and Clarkesville R. R. Co.,	890,000 00
Piedmont R. R. Co.,	10,500 00
State University R. R. Co.,	16,800 00
Yadkin R. R. Co.,	462,750 00
Charlotte Columbia and Augusta R. R. Co.,	10,000 00
North Carolina State Exposition,	800 00
Piedmont Exposition,	1,000 00
Richmond and West Point Ter. Railway and Warehouse Co. Preferred scrip,	33 33
Richmond and West Point Ter. Railway and Warehouse Co. Common stock,	560 00
Yorktown Centennial Association,	1,000 00

(b) BONDS.

Company.	Par Value.
Richmond and West Point Terminal Railway and Warehouse Co. 5 per cent.,	\$ 100 00
Roanoke Valley Railroad Bonds,	23,500 00
Hall County, Georgia, 8 per cent. Bonds,	57,100 00
Georgia Pacific Railway Company Mortgage Income Bonds,	437,430 65
Georgia Pacific Railway Consolidated 2nd Mortgage Bonds,	1,000 00

(c) Certificate of indebtedness of the North Eastern Railroad of Georgia, issued under an agreement between that company and the Richmond and Danville Railroad Company, dated June 14, 1886, \$45,420.59.

Together with uncanceled coupons aggregating \$107, 835 from the First Mortgage Bonds of the said Northeastern Railroad Company, secured by first mortgage deed of trust from said company to R. L. Moss and R. R. Reeves, trustees, dated May 1st, 1876.

Note of the North Eastern Railroad of Georgia, \$23, 491.74.

(d) Certificates of indebtedness of the Charlotte, Columbia and Augusta Railroad Company, issued under the said operating agreement or lease between that company and the Richmond and Danville Railroad Company, \$216, 984.79.

Together with the following stocks and bonds:

Cheraw & Chester Railroad Company, stock, \$ 50,400 00

Chester & Lenoir Narrow Gauge Railroad Co., stock,	165 85
Charlotte, Columbia & Augusta Railroad Co., stock,	103,900 00
North Carolina State Exposition, stock,	100 00
Chester & Lenoir Narrow Gauge Railroad Company 1st Mortgage 7 per cent. Bond,	500 00
Cheraw & Chester Railroad Company 1st Mortgage 7 per cent. Bond,	500 00

(e) Certificates of Indebtedness of the Columbia and Greenville Railroad Company, issued under the said operating agreement between that company and the Richmond and Danville Railroad Company, \$614,608.54.

Together with Blue Ridge Railway Company 7 per cent. Bonds, \$197,000.00.

(f) Certificates of indebtedness of the North Western North Carolina Railroad Company, issued under the operating agreement or lease between that company and the Richmond and Danville Railroad Company, dated July 24, 1890, \$456,168.07.

(g) Certificates of indebtedness of the Richmond and Mecklenburg Railroad Company, issued under the operating agreement or lease between that company and the Richmond and Danville Railroad Company, dated April 5, 1883, \$72,048.37.

(h) Certificate of indebtedness of the Western North Carolina Railroad Company, issued under the operating agreement or lease between that company and the Richmond and Danville Railroad Company, dated April 30, 1886, \$1,179,755.29.

(i) Notes of the Richmond and West Point Terminal Railway and Warehouse Company, \$179,200.

(j) Note of the Roswell Railroad Company, dated March 1, 1883, \$4,000.

(k) Note of the Lawrenceville Railroad Company, dated March 1, 1893, \$8,000.

Also, all the right, title and interest of the Richmond and Danville Railroad Company, and of its receivers, in and to the following judgments and decrees, purchased by and assigned to Huidekoper and Foster, receivers, as stated in the said report, to-wit:

(1) Judgment in the case of Joseph Amey vs. the Georgia Pacific Railway Company, in the Superior Court

of Douglas county, Georgia, \$650, with interest from July 14, 1892, and costs.

(2) Decree for costs against the Georgia Pacific Railway Company, in case of said company vs. M. D. Wilks, No. 124, in Chancery Court for Fayette county, Alabama, \$264.37.

(3) Decree for costs against the Georgia Pacific Railway Company, in case of said company vs. Caleb Ehl, No. 125, in Chancery Court for Fayette county, Alabama, \$240.

(4) Decree for costs against the Georgia Pacific Railway Company, in the case of said company vs. O. G. Harbin, No. 127, in Chancery Court for Fayette county, Alabama, \$185.35.

(5) Decree for costs against the Georgia Pacific Railway Company, in case of said company vs. A. T. Handley, in Chancery Court for Walker county, Alabama, \$78.35.

Like decree in the same court, in case of said company vs. E. W. Miller, administrator, and others, \$75.70.

(6) Judgment against the Georgia Pacific Railway Company, in the case of Jessie W. Nealy vs. said company, in the Superior Court of Fulton county, Georgia, on account of damages done plaintiff's land in the construction of the defendant's railroad, for \$750, with interest from May, 1892, and costs.

(7) Judgment against the Northwestern North Carolina Railroad Company, in the case of L. S. Reece vs. said company, in the Superior Court of Surry county, North Carolina, to recover the value of plaintiff's land taken by the defendant for its railroad, for \$250 damages and \$129.15 costs.

(8) Judgment against the Northwestern North Carolina Railroad Company, in the case of S. J. Atkinson and Aaron Whittaker vs. said company, in the Superior Court of Surry county, North Carolina, to recover the value of plaintiff's land taken by the defendant for its railroad, for \$600 damages, and \$126.50 costs.

(9) Judgment against the North Carolina Midland Railroad Company, in the case of Mary C. Hanes vs. said company, in the Superior Court of Forsyth county, North Carolina, to recover for land of plaintiff taken for the defendant's railroad, for \$1,100 damages, and \$59.45 costs.

Also, all the right, title and interest of the Richmond

and Danville Railroad Company, and its receivers, in and to the \$16,000, now in the hands of the receivers, of the issue of bonds secured under the Equipment Sinking Fund five per cent. mortgage of said company, dated September 3d, 1889.

Also, all right and claim of the Richmond and Danville Railroad Company, and its receivers, to demand the issuance of and receive from the trustee under the Georgia Pacific Railway Company five per cent. Equipment Mortgage, dated July 17th, 1889, of any bonds of the issue secured by said mortgage representing an unfunded balance of \$854.56 by virtue of deposits made by said Richmond and Danville Railroad Company, as stated in the sixth section of said report.

And also all right and claim of the Richmond and Danville Railroad Company, or its receivers, to demand the issuance and receive from the said trustee \$111,000, or any other amount of said last-named issue of bonds by virtue of deposits made by Huidekoper and Foster, receivers, as stated in the sixth section of said report, but not exceeding \$111,000 of such bonds, and an additional amount of such bonds representing an unfunded balance of \$518.16.

Also, all right and claim of the Richmond and Danville Railroad Company, and its receivers, to demand the issuance of and receive from the trustee under the Georgia Pacific Railway Company six per cent. Equipment Mortgage, dated May 1st, 1891, any bonds of the issue secured by said mortgage, representing an unfunded balance of \$250 by virtue of deposits made by said Richmond and Danville Railroad Company, as stated in the sixth section of said report.

And also all right and claim of the Richmond and Danville Railroad Company, or its receivers, to demand the issuance of and receive from the trustee under said Equipment Mortgage \$46,000, or any other amount of the issue of bonds secured by said mortgage, by virtue of the deposits made by said Huidekoper and Foster, receivers, as stated in the sixth section of said report, but not exceeding \$46,000 of such bonds, and an additional amount of such bonds representing an unfunded balance of \$100.

Also, all the right, title and interest of the Richmond and Danville Railroad Company in or to \$167,000 First Mortgage six per cent. Bonds of the North Western North Carolina Railroad Company, mentioned in the fourth section of said report.

Also, all the right, title and interest of the Richmond

and Danville Railroad Company in or to the bonds of the Piedmont Railroad Company, mentioned in the ninth section of said report, to-wit :

\$500,000 First Mortgage six per cent. Bonds of said company, and \$500,000 Second Mortgage six per cent. Bonds of said company, subject, however, to whatever liens, restrictions, debts and rights may now exist against such securities as recited in the receivers' report, or otherwise.

The court further orders that the said sales shall be conducted upon the notice and conditions as follows :

All sales hereby authorized and directed shall be conducted by one or more of the receivers in person, who shall offer for sale whatever right, title and interest the said Richmond and Danville Railroad Company, and the said receivers, have, in law or equity, in and to the said several parcels of real estate, and in and to the said stocks, certificates of indebtedness, bonds and coupons, subject, however, to all outstanding subsisting lawful claims, equities and liens thereon, and offsets thereto, whatever they may be.

The sale of such right, title and interest of the said Richmond and Danville Railroad Company in and to the hereinbefore described stocks, certificates of indebtedness, bonds and coupons, and all other choses in action and personalty assets, shall take place at the Court House door of Henrico county, in Richmond, Virginia, upon four weeks' notice of such sale, which shall be published once each week for four weeks prior to the date fixed by the said receivers for such sale in some newspaper of general circulation printed and published in Richmond, Virginia.

The sale of the right, title and interest of the said Richmond and Danville Railroad Company, and the said receivers, in and to the seven parcels of real estate hereinbefore described, and numbered 1, 5, 6, 8, 9, 11 and 12, shall be conducted and made at the Court House door of the county wherein said several parcels are respectively situate, and the sale of such right in and to the five other parcels of real estate hereinbefore described, and numbered 2, 3, 4, 7 and 10, shall be conducted and made upon some part of each of said five parcels, severally and respectively, and the said receivers shall give notice of such several sales of real estate, or interest therein, by publication of a notice once a week, for four weeks prior to the day of sale, in some newspaper of general circulation published in the county wherein is situate the greater part of any parcel of such real estate so noticed for sale, which notice of sale shall contain a description of the real estate, or interest

Foster, heretofore appointed receivers in this cause, in pursuance of their power as such receivers, and acting under the authority and direction of the court pursuant to its decree of sale entered on November 9, 1894, reference being thereto had, respectfully report to the court :

FIRST.

Pursuant to the directions in said decree, the receivers caused a notice to be published once a week for four weeks preceding the day of sale, in "The Times," a newspaper published in the city of Richmond, Virginia—a newspaper of general circulation, published in Henrico county, wherein is situate the greater part of the several parcels of real estate therein so noticed for such sale, that the receivers of the Richmond and Danville Railroad Company, appointed in this cause, would, on Friday, the 14th day of December, 1894, at ten o'clock in the forenoon, at the Court-House door, Henrico county, city of Richmond, State of Virginia, sell at public auction whatever right, title and interest the said Richmond and Danville Railroad Company, and the said receivers have, in law or equity, in and to the several parcels of real estate hereinafter mentioned, and in and to the stocks, certificates of indebtedness, bonds and coupons, rights and claims, judgments and decrees, choses in action and personalty assets hereinafter described and mentioned to be sold, subject, however, to all outstanding subsisting lawful claims, equities and liens thereon and offsets thereto, whatever they may be ; of which notice a copy marked "Schedule A" is hereunto annexed, forming part of this report, containing a general description of such property to be sold and the terms and conditions of such sale.

At ten o'clock in the afternoon on Friday, the 14th day of December, 1894, the receivers, acting by one of their number, to-wit : Frederic W. Huidekoper, attended at the Court-House door of Henrico county, in the city of Richmond, State of Virginia, and then and there, as required by such decree, did offer for sale, at public auction, all the right, title and interest, legal and equitable, of the said Richmond and Danville Railroad Company and the said receivers in and to the twelve parcels next hereinafter mentioned, being part of the property in said decree directed to be sold, and being specifically described in said notice or sale, and the highest and best bids for the said twelve several parcels, respectively, when so offered, were made by the several bidders hereinter respectively indicated, such bids being severally hereinafter set forth in respect of the several pieces of property for which such bids respectively

were so made and accepted, every such bidder having deposited with the receivers at the time of making such bid ten per cent. of the amount of any and all sums so bid as a pledge that such bidder would make good its bid if accepted by the court.

TWELVE PARCELS SOLD AND BIDS THEREFOR

The first of said parcels being described as follows :

(1) Two lots of lands, with improvements thereon, situated in the city of Richmond, Henrico county, Va., known as the "Palmer Lots," the first of which is described as follows :

All that lot or parcel of land, No. 6, in Byrd Square, lying at the southwest intersection of Nineteenth and Cary streets, fronting 44 feet on Cary street and running back within parallel lines along Nineteenth street on one side 120 feet to Water street.

And the second of which is described as follows :

All that lot or parcel of land, No. 5, in Byrd Square, lying on the south side of D or Cary street, commencing forty-four (44) feet from Nineteenth street, fronting forty-four (44) feet on D or Cary street, and running back within parallel lines and parallel with Nineteenth street one hundred and twenty (120) feet to Water street.

Being the same property conveyed to the Richmond and Danville Railroad Company by Elizabeth W. Palmer, by deed dated January 1, 1872, and recorded in the Chancery Court of the city of Richmond, Va., Deed Book 105 A, page 427.

The highest bid for this parcel (1) was made by Charles H. Coster, and was for the sum of \$8,500.

The second of said parcels being described as follows :

(2) Four parcels of land adjoining and forming together one tract, containing eleven and ninety-five one hundredths (11.95) acres, located near Meadow Station, on the Richmond, York River and Chesapeake Railroad, in Henrico county, Va., the first being described as follows :

Beginning a point on the right of way of the Richmond, York River and Chesapeake Railway Company, 1,050 feet north of Mile Post No. 11 ; thence in a southerly direction and straight line 79.2 feet to a corner ; thence easterly, parallel with the line of the railroad right of way, a distance of 1,100 feet to a corner ; thence northerly 79.2 feet to a corner on the railroad right of way ; thence westerly along the railroad right of way 1,100 feet to the beginning, containing two acres of land, more or less, and being the same property conveyed to the Richmond and Danville Railroad Company by E. M. Bradley, trustee,

and others, by deed dated June 25, 1891, and recorded in the clerk's office of Henrico County Court, Deed Book 146 B, page 400.

The second being described as follows :

Beginning at a point 119 feet south, $22\frac{3}{4}$ degrees west, from a point in the centre of the Richmond, York River and Chesapeake Railroad main line, 1,046 feet east from the Eleven-mile post; running thence south $22\frac{3}{4}$ degrees west, 112 $\frac{1}{2}$ feet; thence south, 25 degrees east, 45 feet; thence south, $88\frac{1}{2}$ degrees east, 830 feet; thence north, 13 degrees west, 156 feet; thence north, $88\frac{1}{2}$ degrees west, 800 feet to the beginning, containing three and twelve-hundredths acres of land, more or less, and being the same conveyed to said Richmond and Danville Railroad Company by E. M. Bradley, trustee, and others, by deed dated March 2, 1892, and recorded in said clerk's office in Deed Book 139 A, page 64.

The third being described as follows :

Beginning at the corner of the parcel secondly-above described at the end of the second line thereof, and running thence south, $20\frac{5}{8}$ degrees east, 97 feet; thence south, $9\frac{1}{4}$ degrees east, 8 feet; thence south, $88\frac{1}{2}$ degrees east, 830 feet; thence north, 13 degrees west, 105 feet to the south line of the parcel secondly above described; thence along the said line of said parcel north, $88\frac{1}{2}$ degrees west, 830 feet to the beginning, containing two acres of land, more or less, and being the same conveyed by E. M. Bradley, trustee, and others, to the Richmond and Danville Railroad Company by deed dated September 11, 1893, and recorded in said office in Deed Book 144 A, page 100.

The fourth being described as follows :

Beginning at a point 118 $\frac{1}{2}$ feet south, $17\frac{1}{2}$ degrees east, from a stake planted in the centre of the main line of the Richmond, York River and Chesapeake railroad, 2,150 feet east, measured along said centre line, from the eleven-mile post, and running thence south, $87\frac{1}{2}$ degrees west, 430 $\frac{1}{2}$ feet; thence south, 13 degrees east, 305 feet; thence north, $88\frac{1}{2}$ degrees west, 830 feet to the line of C. F. Garthright's land; thence south, 9 degrees east, 196 feet to a pine tree; thence due east, 581 feet to a pine tree; thence north, $44\frac{1}{2}$ degrees east, 536 feet to the beginning, containing four and eighty-three hundredths acres of land, more or less, and being the same conveyed to the Richmond and Danville Railroad Company by E. M. Bradley, trustee, and others, by deed dated April 18, 1894, and recorded in said clerk's office in Deed Book 145 A, page 233.

The highest bid for this parcel (2) was made by Charles H. Coster, and was for the sum of \$300.

The third of said parcels being described as follows:

(3) Two parcels of land near the aforesaid Meadow Station, Henrico county, aforesaid, containing, together, forty-one and eight-tenths (41 8-10) acres, conveyed to said Richmond and Danville Railroad Company by G. R. Tabb, trustee, and others, by deed dated May 13, 1889, and recorded in the clerk's office of Henrico County Court, in Deed Book 127 A, page 369, and particularly described as follows:

Beginning for the first parcel near Meadow Station, on the Richmond, York River and Chesapeake railroad, at the ten-mile post, at a point in said railroad company's right of way marked by a stone and designated by letter "A" on the map attached to said deed; thence north, 23 degrees east, 800 feet to a stone; thence south, $69\frac{1}{4}$ degrees east, 885 feet to a stone; thence north, $46\frac{1}{2}$ degrees east, 570 feet; thence north, $44\frac{1}{4}$ degrees east, 515 feet to a stone; thence south, $64\frac{1}{2}$ degrees east, 925 feet to a point on Boar Swamp; thence up and along the channel of Boar Swamp in a southwesterly direction to the line of the railroad company's right of way, at a brick outvent; thence in the westerly direction along said right of way to the place of beginning, containing thirty-nine and seven-tenths acres of land, more or less.

Beginning for the second of said parcels at the intersection of the line between the "Long-Meadow" tract and that of E. M. Bradley, trustee, with the south line of the said railroad right of way; thence south, $17\frac{1}{2}$ degrees east, 350 feet to Boar Swamp; thence down the channel of Boar Swamp in a southeasterly direction to the railroad right of way; thence in a westerly direction along said right of way to the beginning, containing two and one-tenth acres of land, more or less.

The highest bid for this parcel (3) was made by Charles H. Coster, and was for the sum of \$250.

The fourth of said parcels being as follows:

(4) And, also, all the right, title and interest of the Richmond and Danville Railroad Company in and to the following stocks, certificates of indebtedness, bonds and coupons:

(A) STOCK.

Company.	Par Value.
Hartwell R. R. Co.,	\$13,000 00
Clarkesville and North Carolina R. R. Co.,	100,000 00
Danville and New River R. R. Co.,	1,700 00
Danville and Western R. R. Co.,	368,600 00
Elberton Air Line R. R. Co.,	200 00

High Point, Randleman, Asheboro and Southern R. R. Co.,	212,500 00
Lawrenceville R. R. Co.,	75 00
Milton and Southerlin R. R. Co.,	36,400 00
Macon and Northern R. R. Co.,	500,000 00
Northwestern North Carolina R. R. Co.,	1,172,900 00
Norfolk and Carolina R. R. Co.,	295,800 00
Oxford and Clarkesville R. R. Co.,	890,000 00
Piedmont R. R. Co.,	10,500 00
State University R. R. Co.,	16,800 00
Yadkin R. R. Co.,	462,750 00
Charlotte, Columbia and Augusta R. R. Co.,	10,000 00
North Carolina State Exposition,	800 00
Piedmont Exposition,	1,000 00
Richmond and West Point Terminal Railway and Warehouse Co., preferred scrip,	33 33
Richmond and West Point Terminal Railway and Warehouse Co., common stock,	560 00
Yorktown Centennial Association,	1,000 00

(B) BONDS.

Company.	Par Value.
Richmond & West Point Ter. R'y. & Warehouse Co. 5 per cent.,	\$100 00
Roanoke Valley Railroad bonds,	23,500 00
Hall County, Georgia, 8 per cent. bonds,	57,100 00
Georgia Pacific Railway mortgage income bonds,	\$437,430 65
Georgia Pacific Railway consolidated second mortgage bonds,	1,000 00

(c) Certificate of indebtedness of the Northeastern railroad of Georgia, issued under an agreement between that company and the Richmond and Danville Railroad Company, dated June 14, 1886, \$45,420.59.

Together with uncanceled coupons aggregating \$107, 835 from the first mortgaged bonds of the said Northeastern Railroad Company, secured by first mortgage deed of trust from said company to R. L. Moss and R. R. Reeves, trustees, dated May 1, 1876.

Note of the Northeastern Railroad of Georgia, \$23, 491.74

(d) Certificates of indebtedness of the Charlotte, Columbia and Augusta Railroad Company, issued under the said operating agreement or lease between that company and the Richmond and Danville Railroad Company, \$216,984.79.

Together with the following stocks and bonds :

Cheraw & Chester Railroad Company stock,	\$ 50,400 00
Chester & Lenoir Narrow-Gauge Railroad Company stock,	165 85
Charlotte, Columbia and Augusta Railroad Company stock,	103,900 00
North Carolina State Exposition stock,	100 00
Chester and Lenoir Narrow-Gauge Railroad Company first mortgage 7 per cent bonds,	500 00
Cheraw and Chester Railroad Company first mortgage 7 per cent. bonds,	500 00

(e) Certificates of indebtedness of the Columbia and Greenville Railroad Company, issued under the said operating agreement between that company and the Richmond and Danville Railroad Company, \$614,608.54.

Together with Blue Ridge Railway Company 7 per cent. bonds, \$197,000.

(f) Certificates of indebtedness of the Northwestern North Carolina Railroad Company, issued under the operating agreement or lease between that company and the Richmond and Danville Railroad Company, dated July 24, 1890, \$456,168.07.

(g) Certificates of indebtedness of the Richmond and Mecklenburg Railroad Company, issued under the operating agreement or lease between that company and the Richmond and Danville Railroad Company, dated April 5, 1883, \$72,048.37.

(h) Certificate of indebtedness of the Western North Carolina Railroad Company, issued under the operating agreement or lease between that company and the Richmond and Danville Railroad Company, dated April 30, 1886, \$1,179,755.29.

(i) Notes of the Richmond and West Point Terminal Railway and Warehouse Company, \$179,200.

(j) Note of the Roswell Railroad Company, dated March 1, 1883, \$4,000.

(k) Note of the Lawrenceville Railroad Company, dated March 1, 1893, \$8,000.

The highest bid for this parcel (4) was made by Charles H. Coster, and was for the sum of \$3,000.

The fifth of said parcels being as follows :

(5) Also, all the right, title and interest of the Richmond and Danville Railroad Company and of its receivers in and to the following judgments and decrees purchased

by and assigned to Huidekoper and Foster, receivers, as stated in the said report, to-wit :

(a) Judgment in the case of Joseph Amey *vs.* The Georgia Pacific Railway Company, in the Superior Court of Douglas county, Ga., \$650, with interest from July 14, 1892, and costs.

(b) Decree for costs against the Georgia Pacific Railway Company in case of said Company *vs.* M. D. Wilks, No. 124, in Chancery Court for Fayette county, Alabama, \$264.37.

(c) Decree for costs against the Georgia Pacific Railway Company in the case of said Company *vs.* Caleb Ehl, No. 125, in Chancery Court for Fayette county, Alabama, \$240.

(d) Decree for costs against the Georgia Pacific Railway Company in the case of said Company *vs.* O. G. Harbin, No. 127, in Chancery Court for Fayette county, Alabama, \$185.35.

(e) Decree for costs against the Georgia Pacific Railway Company in case of said Company *vs.* A. T. Handley, in Chancery Court for Walker county, Alabama, \$78.35.

Like decree in the same court in the case of said Company *vs.* E. W. Miller, administrator, and others, \$75.70

(f) Judgment against the Georgia Pacific Railway Company in the case of Jessie W. Nealy *vs.* said company, in the Superior Court of Fulton county, Georgia, on account of damages done plaintiff's land in the construction of the defendant's railway, for \$750, with interest from May, 1892, and costs.

(g) Judgment against the North Western North Carolina Railroad Company in the case of L. S. Reece *vs.* said Company, in the Superior Court of Surry county, North Carolina, to recover the value of plaintiff's land taken by the defendant for its railroad, for \$250 damages and \$129.15 costs.

(h) Judgment against the North Western North Carolina Railroad Company in the case of S. J. Atkinson and Aaron Whitaker *vs.* said Company, in the Superior Court of Surry county, North Carolina, to recover the value of plaintiffs' land taken by the defendant for its railroad, for \$600 damages and \$126.50 costs.

(i) Judgment against the North Carolina Midland Railroad Company, in the case of Mary C. Hanes *vs.* said

Company, in the Superior Court of Forsyth county, North Carolina, to recover for land of plaintiff taken for defendant's railroad, for \$1,100 damages and \$59.45 costs.

The highest bid for this parcel (5) was made by Charles H. Coster, and was for the sum of \$1,500.

The sixth of said parcels being as follows :

(6) Also, all the right, title and interest of the Richmond and Danville Railroad Company and its receivers in and to the \$16,000 now in the hands of the receivers, of the issue of bonds secured under the equipment sinking fund 5 per cent. mortgage of said company, dated September 3, 1889.

The highest bid for this parcel (6) was made by Charles H. Coster, and was for the sum of \$3,000.

The seventh of said parcels being as follows :

(7) Also, all right and claim of the Richmond and Danville Railroad Company and its receivers to demand the issuance of and receive from the trustee under the Georgia Pacific Railway Company 5 per cent. equipment mortgage, dated July 17, 1889, of any bonds of the issue secured by said mortgage representing an unfunded balance of \$854.56 by virtue of deposits made by said Richmond and Danville Railroad Company, as stated in the sixth section of said report.

The highest bid for this parcel (7) was made by Charles H. Coster, and was for the sum of \$5.

The eighth of said parcels being as follows :

(8) And also, all right and claim of the Richmond and Danville Railroad Company or its receivers to demand the issuance and receive from the said trustee \$111,000, or any other amount of said last-named issue of bonds by virtue of deposits made by Huidekoper and Foster, receivers, as stated in the sixth section of said report, but not exceeding \$111,000 of such bonds and an additional amount of such bonds representing an unfunded balance of \$518.16.

The highest bid for this parcel (8) was made by Charles H. Coster, and was for the sum of \$5,000.

The ninth of said parcels being as follows :

(9) Also, all right and claim of the Richmond and Danville Railroad Company and its receivers to demand the issuance of and receive from the trustee under the Georgia Pacific Railway Company 6 per cent. equipment mortgage, dated May 1, 1891, any bonds of the issue secured by said mortgage, representing an unfunded balance

of \$250 by virtue of deposits made by said Richmond and Danville Railroad Company, as stated in the sixth section of said report.

The highest bid for this parcel (9) was made by Charles H. Coster, and was for the sum of \$100.

The tenth of said parcels being as follows :

(10) And also all right and claim of the Richmond and Danville Railroad Company or its receivers to demand the issuance of and receive from the trustee under said equipment mortgage, \$46,000, or any other amount of the issue of bonds secured by said mortgage by virtue of the deposits made by said Huidekoper and Foster, receivers, as stated in the sixth section of the said report, but not exceeding \$46,000 of such bonds, and an additional amount of such bonds representing an unfunded balance of \$100.

The highest bid for this parcel (10) was made by Charles H. Coster, and was for the sum of \$5,250.

The eleventh of said parcels being as follows :

(11) Also, all the right, title, and interest of the Richmond and Danville Railroad Company in or to \$167,000 first mortgage 6 per cent. bonds of the Northwestern North Carolina Railroad Company mentioned in the fourth section of said report.

The highest bid for this parcel (11) was made by Charles H. Coster, and was for the sum of \$1,135.

The twelfth of said parcels being as follows :

(12) Also, all the right, title, and interest of the Richmond and Danville Railroad Company in or to the bonds of the Piedmont Railroad Company, mentioned in the ninth section of said report—to-wit :

\$500,000 first mortgage 6 per cent. bonds of said company, and \$500,000 second mortgage 6 per cent. bonds of said company, subject, however, to whatever liens, restrictions, debts, and rights may now exist against such securities as recited in the receivers' report or otherwise.

The highest bid for this parcel (12) was made by Charles H. Coster, and was for the sum of \$15,000.

And thereupon the receivers did strike off all the right, title, and interest, legal and equitable, of the said Richmond and Danville Railroad Company, and the said receivers, in and to the said twelve parcels part of the property described in the said decree and ordered to be sold to the said several bidders therefor, at the several amounts and prices so bid, and took the memorandum of sale hereunto annexed and forming part of this report, marked "Schedule C."

The receivers hold, subject to the Court's order, the \$4,304 cash paid over on said bids.

SECOND.

And the said receivers further report as follows, to-wit:

Pursuant to the directions in said decree, they caused a notice to be published once a week in each week for the term of four weeks preceding the day of sale, in the Manchester Leader, a newspaper published at Manchester, Virginia, being a newspaper of general circulation, published in Chesterfield county, Virginia, wherein is situate the greater part of the two several parcels of such real estate therein so noticed for sale and hereinafter described, that they would, on Friday, the 14th day of December, 1894, at two o'clock in the afternoon on the respective premises, sell at public auction whatever right, title, and interest the said Richmond and Danville Railroad Company and the said receivers have, in law or equity, to the two several parcels of real estate hereinafter mentioned, subject, however, to all outstanding lawful claims, equities, and liens thereon, whatever they may be; of which notice a copy marked "Schedule B" is hereunto annexed, forming part of this report, and containing a general description of the property to be sold and the terms and conditions of such sale.

PARCELS 13 AND 14 AND BIDS THEREFOR.

At two o'clock in the afternoon of Friday, December 14, 1894, the receivers, by Frederic W. Huidekoper, one of their number, attended first at the stone wharf at the eastern terminus of the Richmond and Danville Railroad, at Manchester, in Chesterfield county, Virginia, in respect of the parcel hereinafter described and identified as parcel 13, and thereafter upon the premises in Chesterfield county, hereinafter described and identified as parcel 14; and at such several places as required by said decree, did separately offer for sale at public auction, to the highest bidder or bidders, as an entirety and in one parcel, whatever right, title, and interest the said Richmond and Danville Railroad Company and the said receivers had, in law or equity, in or to the several parcels of real estate, hereinafter mentioned, respectively, subject, however, to all outstanding lawful claims, equities, and liens thereon, whatever they may be, and the highest and best bids for the said two parcels, respectively, when so offered, were made by the several bidders hereinafter respectively indicated, such bids being severally hereinafter set forth in respect of the sev-

eral pieces of property for which such bids respectively were so made and accepted, each such bidder having deposited with the receivers at the time of making such bid ten per cent. of the amount of the sums so bid as a pledge that such bidder would make good its bid if accepted by the court.

The thirteenth of said parcels being described as follows :

(13) All that land and railroad and property, with all the rights and privileges thereto belonging, or in any wise appertaining, formerly belonging to the Chesterfield Railroad Company, extending from a connection with the Richmond and Danville Railroad (now Southern Railway) at Manchester, to a point on the south side of the James river opposite Rockett's wharves, Richmond, all in Chesterfield county, State of Virginia, more particularly described as all the roadway and property formerly belonging to said Chesterfield Railroad Company, in Chesterfield county aforesaid, lying between a line drawn at right angles to the east town line of Manchester from the point at which the said town line intersects the centre line of the Richmond and Danville Railroad, across the said roadway of the Chesterfield Railroad Company and the eastern terminus of the said roadway, extending from the said line along the boundaries of the said roadway, to and through the coal yards opposite Rocketts to the extreme eastern terminus of the said roadway, and embracing all the roadway, line, and property of the said Chesterfield Railroad Company, lying and being between the said lines, boundaries, and eastern terminus, being the same property conveyed to the Richmond and Danville Railroad Company by the said Chesterfield Railroad Company by deed dated July 28, 1858, and recorded in the Chesterfield County Court Clerk's Office, Deed Book 54, page 715.

The highest bid for this parcel (13) was made by Charles H. Coster, and was for the sum of \$500.

The fourteenth of said parcels being described as follows :

(14) All that coal yard and land attached thereto, lying on the James river opposite Rocketts, in Chesterfield county, Va., containing 4 acres, 1 rod, 18 perches and $\frac{3}{4}$ of a perch or thereabouts, which was conveyed to the Richmond and Danville Railroad Company by Andrew Johnson and James A. Jones, special commissioners, by deed dated July 9th, 1872, and recorded in said clerk's office in Deed Book 55, page 350.

The highest bid for this parcel (14) was made by Charles H. Coster, and was for the sum of \$1,000.

Thereupon the receivers did strike off all the right, title, and interest, legal and equitable, of the said Richmond and Danville Railroad Company and the said receivers in and to the said two parcels, part of the property so described in the said decree, and ordered to be sold, to the said Charles H. Coster, bidder therefor, at the amount and price so bid, and took from the bidder the memorandum of sale hereunto annexed and forming part of this report, marked "Schedule C."

The receivers hold, subject to the court's order, the sum of \$150 cash, paid over to them on these two bids.

THIRD.

The receivers ask authority and instruction from time to time to proceed and report with reference to the other property directed to be sold under said decree of November 9, 1894, and from time to time hereafter to report with reference thereto.

Dated Richmond, Virginia, December 14, 1894.

SAMUEL SPENCER.

FREDERIC W HUIDEKOPER.

REUBEN FOSTER.

Receivers Richmond & Danville R. R. Co.

**MEMORANDUM OF SALE AND NOTICE FOR CONFIRMATION.
SCHEDULE C TO REPORT OF RECEIVERS.**

CIRCUIT COURT OF THE UNITED STATES FOR THE EAST-
ERN DISTRICT OF VIRGINIA.

Central Trust Company of New York and others	}	Consolidated Cause. In Equity.
Richmond and Danville Railroad Company and others.		
William P. Clyde and others	}	
Richmond and Danville Railroad Company and others.		

Having reference to the decree specified in the foregoing notice of sale published by the receivers appointed in the above-entitled cause, the undersigned hereby acknowledges that he has purchased at public auction from

the receivers of this court all the right, title, and interest, legal and equitable, of the said Richmond and Danville Railroad Company and the said receivers in and to the fourteen several parcels of property as described in the said decree of sale and in the advertisement of sale and in the receivers' report of sale above set forth, as offered and sold by the receivers, at and for the several sums following, to-wit:

Parcel 1, for the sum of	\$ 8,500.
Parcel 2, for the sum of	300.
Parcel 3, for the sum of	250.
Parcel 4, for the sum of	3,000.
Parcel 5, for the sum of	1,500.
Parcel 6, for the sum of	3,000.
Parcel 7, for the sum of	5.
Parcel 8, for the sum of	5,000.
Parcel 9, for the sum of	100.
Parcel 10, for the sum of	5,250.
Parcel 11, for the sum of	1,135.
Parcel 12, for the sum of	15,000.
Parcel 13, for the sum of	500.
Parcel 14, for the sum of	1,000.

the amount bid making the aggregate sum of forty-four thousand five hundred and forty dollars (\$44,540).

And the undersigned hereby promises and agrees with the receivers, if such sale is confirmed, fully to pay and discharge such sums so bid on such property in accordance with the decree, and in all things to comply with the terms and conditions of such sale and such orders as the court has already entered, or may hereafter enter, to enforce the purchase of such property under the provisions of such decree.

The undersigned, as such purchaser, has paid over to the receivers on the accepted bids the sum of \$4,454 in money, and has fully complied with the terms of such decree and sale, so far as now obligatory upon him, and upon the said report is entitled to a confirmation thereof.

The undersigned is ready and willing fully to complete such purchases and to make payment of said bid, and to comply with the court's further orders now and hereafter to be entered in that behalf, according to the terms of the decree; and, accordingly, the undersigned hereby gives notice that upon Tuesday, the 18th day of December, 1894, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the undersigned will apply to the Circuit Court of the United States for the

Eastern District of Virginia, at Richmond, Virginia, for an order and decree that the report of the said receivers, dated 14th of December, 1894, be confirmed, and that this petition for the confirmation of such sale be granted, and that the receivers of the court and the Richmond and Danville Railroad Company be directed forthwith to execute and deliver to the undersigned, as purchaser, proper deeds and transfers of the fourteen several parcels, part of the property mentioned in said decree and in said notice of sale, and set forth in the receivers' said report of sale.

C. H. COSTER.

FRANCIS LYNDE STETSON, Solicitor.

And on another day, to-wit: Dec. 18, 1894, the following decree, confirming sale, was entered:

DECREE CONFIRMING SALE AND ORDERING CONVEYANCE.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN
DISTRICT OF VIRGINIA.

Central Trust Company of New York and others	}	Consolidated Cause. In Equity.
Richmond and Danville Railroad Com- pany and others.		
William P. Clyde and others		
Richmond and Danville Railroad Com- pany and others.		

Now, on this December 18, 1894, come again the parties, by their respective solicitors, and comes also, the purchaser, Charles H. Coster, and petition that the report of the receivers, filed herein on December 14, 1894, should be approved, and the sale of all the right, title and interest, legal and equitable, of the said Richmond and Danville Railroad Company, and of said receivers in and to the fourteen parcels of property, as described in the said report, should be confirmed and made absolute, came on to be heard.

And it appearing, by the report of the receivers, that such purchaser has fully complied with the directions in said decree as to the sale of the said property, and that such purchaser was the highest and best bidder for the several parcels of property as set forth in the said report, and that the same were severally struck off to such purchaser as follows, to-wit :

Parcel 1, for the sum of	\$ 8,500
Parcel 2, for the sum of	300
Parcel 3, for the sum of	250
Parcel 4, for the sum of	3,000
Parcel 5, for the sum of	1,500
Parcel 6, for the sum of	3,000
Parcel 7, for the sum of	5
Parcel 8, for the sum of	5,000
Parcel 9, for the sum of	100
Parcel 10, for the sum of	5,250
Parcel 11, for the sum of	1,135
Parcel 12, for the sum of	15,000
Parcel 13, for the sum of	500
Parcel 14, for the sum of	1,000

making the aggregate sum of forty-four thousand five hundred and forty 00-100 dollars, (\$44,540.00), subject, however, to all and singular the terms and conditions in said decree set forth, and to all outstanding subsisting lawful claims, equities and liens on said several parcels of property respectively, and any offsets to any such claims, whatever they may be; and that such purchaser has made the payment thus far obligatory upon it.

And it being shown, to the satisfaction of the court, that the recitals in the said report of the receivers, dated December 14, 1894, are true, and no cause being shown against said report.

Thereupon, the court orders and decrees that the said report of the receivers be spread at large upon the records, and be, in all things, approved; and the sale made by them to the said purchaser, being all and singular the right, title and interest, legal and equitable, of the said Richmond and Danville Railroad Company, and the said receivers in and to the fourteen several parcels, part of the property described in and by the said decree, and by the said receivers reported to have been sold, at and for the several sums so reported, being for the aggregate sum of forty-four thousand five hundred and forty 00-100 dollars (\$44,540.00), be and the same hereby is in all things ratified, approved, confirmed and made absolute, subject, however, to all out-standing subsisting lawful claims, equities and liens thereon and offsets thereto, whatever they may be, and subject also to all and singular the terms and conditions of purchase as recited in said decree.

And the court accepts the said Chas. H. Coster as purchaser of all and singular the fourteen parcels of property so sold under the decree in this cause, and holds such purchaser obligated to complete and fully to pay said bid,

and to comply with all the orders of the court heretofore entered, and from time to time hereafter to be entered by it, obligatory upon such purchaser.

And it is further ordered and decreed that the receivers be, and they are hereby authorized and directed, on the request of said purchaser, and on receiving payment of the balance of the purchase price, to sign, seal, execute, acknowledge and deliver proper deeds and transfers, conveying to the said purchaser or his assigns all and singular the right title and interest, legal and equitable, of the said Richmond and Danville Railroad Company, and the said receivers, in and to the said several fourteen parcels of property so as aforesaid embraced in said report, and so as aforesaid sold under the decree of this court, free from any and all equity of redemption of the Richmond and Danville Railroad Company, or any one claiming by, under or through it; and, from the date of this decree, the said purchaser shall fully possess and be invested with all of the right, title and interest, legal and equitable, of the said Richmond and Danville Railroad Company and the said receivers in and to the said property mentioned in said report and sold under the decree of this court, as absolute owner thereof, to have and to hold the same to such purchaser and to his assigns forever.

In order to facilitate the recording thereof, several counterparts of such deeds may be executed, acknowledged and delivered by the receivers, all or any one or more of which may be recorded; and any one or more of such counterparts, when executed, acknowledged and delivered, shall severally or collectively be deemed to be an original, and, for all intents and purposes, shall constitute a single instrument.

It is also further ordered that, by way of further assurance and confirmation of the title to said purchaser of the fourteen several parcels of property so purchased under the decree of this court, the Richmond and Danville Railroad Company, by its proper officers and under its corporate seal, shall, upon request of said purchaser or his assigns, sign, seal, execute, acknowledge and deliver said purchaser or his assigns, all proper deeds of conveyance, and transfers, and releases and further assurances of all the right, title and interest, legal and equitable, of the said Richmond and Danville Railroad Company in and to the said several fourteen parcels of property respectively mentioned in said report and sold as aforesaid under the decree of this court, so as to fully and completely to transfer to and invest in the said purchaser or his assigns, respectively, all the right, title and interest, legal and equitable,

of the said Richmond and Danville Railroad Company in and to the said several fourteen parcels of such property respectively.

The receivers shall deposit the cash paid to them by the purchaser in the First National Bank of Richmond, Virginia, to abide the further order of the court herein.

The court reserves for further hearing and consideration all questions concerning the disposition of the proceeds of the sale herein mentioned, and also authorizes and directs the receivers from time to time hereafter to proceed and to report with reference to the sale of the other parcels embraced in the said decree of this court entered November 9, 1894.

NATHAN GOFF,

U. S. Circuit Judge.

Dec. 18, 1894.

AFFIDAVIT OF CARNEGIE STEEL COMPANY, "LIMITED."

Filed with Master Commissioners October 14th, 1892.

STATE OF PENNSYLVANIA, }

County of Allegheny. }

Before me, the subscriber, a notary public in and for the Commonwealth of Pennsylvania, residing in the city of Pittsburgh, personally came L. C. Phipps, Assistant Treasurer of The Carnegie Steel Company, Limited, who, being first duly sworn, says the Richmond and Danville Railroad Company is indebted to The Carnegie Steel Company, Limited, in the sum of one hundred and twenty-five thousand, sixty-seven dollars and thirty-nine cents (\$125,067.39) on five promissory notes executed and delivered by said railroad company to Carnegie Brothers & Company, Limited, true and correct copies of which several notes are hereto attached and made a part of this affidavit; that said notes were given for material furnished, to-wit: steel rails furnished by said The Carnegie Steel Company, Limited, and delivered to said Richmond and Danville Railroad Company, at the prices agreed upon therefor; that nothing has been paid on account of any of said notes, and the aggregate amount thereof, namely, one hundred and twenty-five thousand, sixty-seven dollars and thirty-nine cents (\$125,067.39), with interest on the amount of each note from its maturity, is now due and owing from the said railroad company to The Carnegie Steel Company, Limited.

Affiant further says, that the payee, Carnegie Brothers & Company, Limited, named in said notes, is now known as The Carnegie Steel Company, Limited, by reason of a

change of name which took effect July 1, 1892, and that the amount due on said several notes is owing to The Carnegie Steel Company, Limited.

L. C. PHIPPS.

Sworn and subscribed before me this 12th day of October, 1892.

{ Seal. }

GEORGE D. PACKER,
Notary Public.

The copies of notes attached to and made part of the foregoing affidavit are as follows, to-wit :

(Copy.)

\$33,174.99.

New York, June 7th, 1892.

Four months after date we promise to pay to the order of Carregie Bros. & Co., L-d, thirty-three thousand, one hundred and seventy-four and 99-100 dollars at office Richmond & Danville R. R. Co. 80 Broadway, New York, without defalcation for value received.

(Signed)

RICHMOND & DANVILLE R. R. CO.,
JOHN A. RUTHERFURD,

Due Oct. 7, 10, '92.

3rd. Vice-President.

(Copy.)

\$5,355.09.

New York, May 16th, 1892.

Three months after date we promise to pay to the order of Carnegie Bros. & Co., L-d, fifty-three hundred fifty-five & .09-100 dollars at office Richmond & Danville R. R. Co., 80 Broadway, New York, without defalcation, for value received.

(Signed)

RICHMOND & DANVILLE R. R. CO.
JOHN A. RUTHERFURD,

3rd Vice-President.

Due Aug. 19th, 1892.

(Copy.)

\$12,786.16.

New York, April 4th, 1892.

Three months after date we promise to pay to the or-

der of Carnegie Bros. & Co., L-d, twelve thousand seven hundred eighty-six & 16-100 dollars at office Richmond & Danville R. R. Co., 80 Broadway, New York, without defalcation, for value received.

(Signed)

RICHMOND & DANVILLE R. R. CO.
JOHN A. RUTHERFURD,
3rd Vice-President.

(Copy.)

\$35,499.38.

New York, March 24th, 1892.

Three months after date we promise to pay to the order of Carnegie Bros. & Co., L-d, thirty-five thousand four hundred ninety-nine & 38-100 dollars at office Richmond & Danville R. R. Co. 80 Broadway, New York, without defalcation, for value received.

(Signed)

RICHMOND & DANVILLE R. R. CO.
JOHN A. RUTHERFURD,
3rd Vice-President.

Due June 24, 27, '92.

(Copy.)

\$38,251.77.

New York, March 21st, 1892.

Three months after date we promise to pay to the order of Carnegie Bros. & Co., L-d, thirty-eight thousand two hundred fifty-one & 77-100 dollars at office Richmond & Danville R. R. Co., 80 Broadway, New York, without defalcation, for value received.

(Signed)

RICHMOND & DANVILLE R. R. CO.
JOHN A. RUTHERFURD,
3rd Vice-President,

Due June 21, 24, '92.

STATEMENT.

Pittsburg, Oct. 26, 1892.

RICHMOND & DANVILLE RAILROAD CO.,

New York,

In account with

CARNEGIE BROTHERS & CO., LIMITED.,

The Edgar Thomson Steel Works and Furnaces,
Bessemer, Pa.For Steel Rails Shipped on Contracts Dated June 10th,
1891, and Oct. 6th, 1891.

1891.						
Ju y	25.	419-0070	tons	Rails	@ \$30.00,	\$12,570 94
"	"	52-0600	"	"	" 28.50,	1,489 63
"	27.	563-1710	"	"	" 30.00,	16,912 90
"	28.	73-0860	"	"	" 30.00,	2,201 52
Aug.	14.	302-0580	"	"	" 30.00,	9,067 77
"	15.	931-0370	"	"	" 30.00,	27,934 96
"	"	43-1850	"	"	" 28.50,	1,249 64
"	17.	720-2110	"	"	" 30.00,	21,628 26
"	"	97-0510	"	"	" 28.50,	2,770 99
"	18.	370-0010	"	"	" 30.00,	11,100 13
"	20.	19-1240	"	"	" 30.00,	586 61
"	21.	47-1360	"	"	" 30.00,	1,428 21
"	24.	268-0060	"	"	" 30.00,	8,040 80
"	25.	91-0040	"	"	" 30.00,	2,730 54
"	29.	18-1680	"	"	" 30 00,	562 50
Oct.	9.	136-1700	"	"	" 26.00,	3,555 73
"	10.	47-1280	"	"	" 26.00,	1 236 86
4203- ⁰³⁵⁰ ₂₂₄₀ tons Rails for						\$125,067 39

STATE OF PENNSYLVANIA. { ss :
County of Allegheny, }

Before me, a notary public in and for said county and State, personally came L. C. Phipps, assistant treasurer of The Carnegie Steel Company, Limited, who, being sworn, says the foregoing is a true and correct copy of the account of the Richmond and Danville Railroad Company with The Carnegie Steel Co., Limited, as the same now stands upon the books of said The Carnegie Steel Co., Limited, which company, prior to July 1st, 1892, was known as Carnegie Brothers & Co., Limited. That the Richmond and Danville Railroad Co. is now indebted to said The Carnegie Steel Co., Limited, in the sum of one hundred twenty-five thousand, sixty-seven and 39-100 dollars, with interest, as shown by the foregoing account, for steel rails delivered to said Railroad Co. at its special instance and request, at the prices charged in

the foregoing account. That the said material was delivered to said Railroad Co. and accepted by it at the times and in the quantities set out in said account, and that no part of said sum of one hundred twenty-five thousand, sixty-seven and 39-100 dollars, now due, or any interest thereon, has been paid by said Railroad Co., directly or indirectly, to The Carnegie Steel Co., Limited.

L. C. PHIPPS.

Sworn and subscribed before me this 27th day of October, 1892.

{ Seal. }

GIBSON D. PACKER,
Notary Public.

**THE PETITION OF THE CARNEGIE STEEL COMPANY,
LIMITED.**

Filed Feb. 12th, 1894.

IN THE CIRCUIT COURT OF THE UNITED STATES, IN AND
FOR THE EASTERN DISTRICT OF VIRGINIA.

The Central Trust Company of New York
vs.
The Richmond & Danville Railroad Company. }

To the Honorable the Judges of said Court :

The petition of The Carnegie Steel Company, Limited, formerly Carnegie Brothers & Company, Limited, humbly follows :

First. That since proof of claim made before the masters in this case the name of the Limited Partnership Association, entitled Carnegie Brothers & Company, Limited, which company sold and delivered to the Richmond and Danville Railroad Company the rails hereinafter specified, has been changed, altered or amended to The Carnegie Steel Company, Limited, by appropriate proceedings, as provided by the statutes of Pennsylvania, under which it was organized, and all of the rights of Carnegie Bros. & Co., Limited, against the Richmond and Danville Railroad and others are now vested in and belong to The Carnegie Steel Company, Limited. That the Association of the Carnegie Steel Company, Limited, formerly Carnegie Brothers & Company, Limited, is a joint stock company formed under the statutes of Pennsylvania, and by virtue thereof is entitled to sue and be sued in the association name, the same as a corporation.

Second. That at the time of the filing of the bill of complaint in this cause, your petitioner was a creditor, to a large amount, of the said defendant, the Richmond and Danville Railroad Company, having theretofore sold and delivered to said company steel rails to the total value of \$125,067.39, which said sum was then, and still is, due and owing to your petitioner, and that they, therefore, in compliance with the notice ordered by this court to be given to creditors, filed their claim in this honorable court in the case of William P. Clyde et al. against The Richmond and Danville Railroad Co. et al., which claim is now pending in said cause before the masters; the demand of your petitioner that the same should be allowed as a claim entitled to equitable priority of payment over the mortgage debt of the said defendant, not having yet been heard or considered by said masters.

Third. That on the day of , 1893, the Central Trust Company of New York filed its original bill of complaint in this honorable court against said Railroad Company, alleging, among other things, that the said Railroad Company was in default in the payment of interest on certain mortgages made to it by said Railroad Company in default, and praying a foreclosure of same and a sale of the property; and after the filing of said bill such proceedings were had that the receivers appointed in the suit of Clyde against said Railroad Company were discharged, and directed to turn over the property of said defendant Railroad Company to the receivers appointed in the suit of the Central Trust Company, all of which will more fully appear from the said order now of record in this court.

Fourth. That the said suit of the Central Trust Company, and the suit theretofore brought by Clyde and others, in which your petitioner and other creditors had filed their claims, as directed by this honorable court, were in *pari materia*, and were and are proper to be consolidated under the practice and rules of this honorable court, and although the rights of your petitioner and other supply creditors were in part preserved by the said order, which transferred the property of said defendant from the one suit to the other, they have in no wise the rights and remedies which they would have had if the regular and orderly course of equity practice had been followed, and the said causes consolidated.

Fifth. And your petitioner in particular avers, in this behalf, that it is advised that the effect of said order of

this court, as it now stands, is such that your petitioner has no right to be heard as to the terms of any decree passed by this court for the sale of the property of the defendant, and providing for the distribution of the proceeds of such sale, nor to object to, except or appeal therefrom, although your petitioner, in good faith and in reliance upon the public notice, has filed its claims as aforesaid, and has used all proper diligence in the prosecution of the same.

Sixth. And your petitioner further shows that it is advised that it and other creditors can duly obtain a proper standing in this court by an order consolidating the cases of Clyde et al. *vs.* The Richmond & Danville Railroad Company et al., with the case of The Central Trust Company of New York *vs.* The Richmond & Danville Railroad Company, or by refiling their claims in said last-named case and retaking the proofs, which latter course would impose an unnecessary and unjust burden upon them.

Wherefore, they humbly pray that this court may pass an order for the consolidation of the aforesaid cases, and that they may have such other and further orders or relief as in equity and justice they may be entitled to receive.

And as, etc., etc.

{ Seal. }

THE CARNEGIE STEEL COMPANY,
LIMITED.

By H. C. FRICK,
Chairman.

Attest :

F. T. F. LOVEJOY,
Secretary,

and
JOHN G. A. LEISHMAN,
Manager.

NICHOLAS P. BOND,
Solicitor.

COMMONWEALTH OF PENNSYLVANIA. } ss :
County of Alleghany,

F. T. F. Lovejoy, being duly sworn by me, did depose and say that he is a member of the Board of Managers of the said petitioner, and that he has read the foregoing petition and knows the contents thereof, and that the averments therein contained are true, to the best of his knowledge, information and belief.

F. T. F. LOVEJOY.

vers in this suit, and prays leave to refer to the record for further particulars.

Third. This respondent is advised and believes that it is not true that the said suit of this respondent and the suit brought by Clyde and others were or are in *pari materia*, or were or are proper to be consolidated under the practice and rules of this court, and, therefore, denies the allegations contained in the fourth article or subdivision of said petition in that behalf. It alleges that it is true that the rights of the petitioner and other supply creditors, if any such rights there be, were preserved by the order transferring the property of the Richmond & Danville Railroad Company to the receivers in this suit. It denies that it was or would have been in accordance with the regular and orderly course of equity practice to consolidate said two causes.

Fourth with respect to the allegations contained in the fifth and sixth articles, paragraphs or subdivisions of said petition, this respondent denies that the remedy existing for alleged grievances set forth in said articles, paragraphs or subdivisions is a consolidation of said two causes. It avers that the said foreclosure suit of this complainant is ripe for decree, whereas the said suit of Clyde and others is not in a condition for a decree, and that it would be contrary to right and justice to delay the proceedings in this suit by consolidating the same with the proceedings in said suit of Clyde. It alleges that the two causes are not of like nature or relative to the same question, and are therefore not within the statute of the United States authorizing consolidation of causes pending in courts of the United States. It alleges that the petitioner has no right or standing to appear or become a party to this suit, and that the rights, if any, of the petitioner will be wholly and effectually protected by the filing of a petition of intervention in this cause, in which petition said petitioner may set forth and allege any and all matters entitling it or which it may claim to entitle it to have priority over the bonds secured by the mortgage set forth in the bill, and to assert any and all such alleged rights with respect to the fund in court and to any proceeds of sale under the decree.

Wherefore this respondent prays that the prayer of the said petition may be denied.

{ Seal. } CENTRAL TRUST CO. OF N. Y.,
By E. FRANCIS HYDE,
2nd Vice-President.
BUTLER, STILLMAN & HUBBARD,
Sol'rs for C. T. Co.

SOUTHERN DISTRICT OF NEW YORK,)
 City and County of New York.) ss:

E. Francis Hyde, being duly sworn, deposes and says that he is the Second Vice-President of the Central Trust Company of New York, the respondent named in the foregoing answer, and that the said answer is true to the best of his knowledge, information and belief.

E. FRANCIS HYDE.

Sworn to before me this 16th day of February, 1894.

{ Seal. }

FRANK B. SMIDT,
 Notary Public, 276,
 N. Y. Co.

And on the same day, to-wit: at a Circuit Court of the United States in and for the Eastern District of Virginia, held at Richmond, in said district, on the 17th day of February, 1894, the following order was entered, to-wit:

ORDER CONSOLIDATING CAUSES.

Central Trust Company of New York	}
<i>vs.</i>	
Richmond and Danville Railroad Company.	}
Wm. P. Clyde and others	
<i>vs.</i>	
Richmond & Danville Railroad Company and others.	

The motion of the Carnegie Steel Company, Limited, for a consolidation of these causes coming on to be heard, in accordance with the order passed for such hearing, on the 12th day of February, 1894, and the counsel for the complainant and defendant in said causes and for the Carnegie Steel Company, Limited, having been heard and the matter considered, it is by the court, this 17th day of February, 1894, ordered that the said causes be and they are hereby consolidated, under the name of the Central Trust Company of New York and others *vs.* the Richmond and Danville Railroad Company and others, Consolidated Cause; and the motion of the complainant, the Central Trust Company of New York, for the entry of a final decree in the consolidated cause having also come on to be heard, after hearing counsel, it is ordered that the said motion for a final decree be set for hearing on Saturday, March 3d, 1894, at 10 o'clock A. M., at the United States court-rooms, in the city of Baltimore, Md.; and that in the meantime, and on

N. GOFF,
Circuit Judge.

PETITION OF THE CARNEGIE STEEL COMPANY, LIMITED.

The Central Trust Company of New
York et al., Complainants,
against
The Richmond and Danville Railroad
Company et al., Defendants.

Consolidated
Cause.

To the Honorable the Judges of said Court :

1. That under and by virtue of a contract, dated June 10th, 1892, and prior to the appointment of the receivers in this cause, the petitioner sold to the defendant Railroad Company steel rails to the total value of one hundred and twenty-five thousand and sixty-seven dollars and thirty-nine cents, and by the terms of said contract guaranteed said rails for a term of five years, which guarantee the receivers of said Railroad Company have, since their appointment, claimed, as against your petitioner, enures to their benefit and to the benefit of the trust represented by

them, for which said amount the defendant has given to your petitioner its promissory notes, due at various times, and which notes were renewed from time to time, the last renewals of which matured subsequent to the appointment of the receivers in the original case of Clyde and others against The Richmond & Danville Railroad Company, and by reason of the foregoing your petitioner was and still is a creditor of the said Richmond and Danville Railroad Company for the said amount,—a copy of the contract and guaranty, and of the notes held by your petitioner at the time of the appointment of the receivers as aforesaid, being attached thereto and made a part of this petition.

II. That the contract referred to in the first paragraph of this petition was made by your petitioner under the name of Carnegie Brothers & Company, Limited, a limited partnership organized under the laws of the State of Pennsylvania, which said limited partnership association has, since the filing of its claims in the case of Clyde against The Richmond and Danville Railroad Company, changed and altered its name by appropriate proceedings as provided by the statutes of Pennsylvania, under which it is organized, to the Carnegie Steel Company, Limited, which association, the Carnegie Steel Company, Limited, is entitled to all of the rights of Carnegie Brothers & Company, Limited, in respect to said claim, and is entitled to sue and to be sued in its association name as a corporation, as provided in the statutes under which it is organized. The filing of the claim of Carnegie Brothers & Company, Limited, in the case of Clyde and others against the said Railroad Company, will fully appear by reference to the proceedings heretofore had in said case.

III. That the rails so sold and delivered by your petitioner to the Richmond and Danville Railroad Company were used by said company in its road-bed for the purpose of maintaining said road-bed in condition to conduct its traffic thereon and were necessary for that purpose.

IV. That your petitioner is advised that, by reason of the premises, it became and is a supply creditor of said defendant Railroad Company, and thereupon equitably entitled to have the earnings of said defendant Railroad Company applied to the payment of its claim before any part thereof was paid to the holders of the bonded debt of said company. That your petitioner is informed, and believes, and therefore avers, that prior to the appointment of the receivers, in the case of Clyde and others against the said defendant Railroad Company, large sums of money were

paid out by the said defendant Railroad Company to its mortgage bondholders in the payment of the interest, and to others, for their exclusive benefit, and that since the appointment of said receivers other large sums of money, more than sufficient to pay your petitioner's claim, have been paid out and expended to the holders of said bonded debt, and for and on their account and for their exclusive benefit, by reason of which payments your petitioner's claim has been left unpaid, and that the sums so paid out were from the earnings of the defendant Railroad Company.

V. That your petitioner is advised that, by reason of the premises, it has a lien in equity to the extent of its claim upon the mortgaged premises prior to the lien of the mortgages securing the bonds described in the bill of complaint.

VI. That although your petitioner filed its claim as aforesaid and although by the original order passed in said cause appointing masters in chancery the said masters were authorized to take and state accounts showing the claims against the defendant railroad company and their respective priorities, yet no account has been so stated by said masters, and no ascertainment has been had of the indebtedness owing by the said defendant or of the respective liens or priorities of the same, and no effort whatever has been made by the bondholders or their trustee to bring on for determination such question or the question generally regarding the priority of the parties in interest as directed by the order of said court.

VII. That your petitioner is informed and believes that the true reason why no account has been filed by the masters showing the indebtedness of the defendant and the order in which the same is due and payable is because of the fact that the firm of Drexel, Morgan & Co., bankers, of the city of New York, acting on behalf of and as the agents for the bondholders and their trustee, for some time prior to the first of May, 1893, were currently reported to be engaged in preparing and promulgating a scheme of reorganization of the said defendant railroad which it was understood would provide for the payment of its floating debt, and that the said firm did in fact upon the 1st day of May, 1893, put forward such a proposed scheme, a copy whereof is herewith filed, marked "Complainant's Exhibit No. 1."

VIII. Your petitioner further shows that the said

scheme of reorganization, as promulgated on the said date, did in fact expressly provide for the payment in full of all the floating debt of the said defendant railroad company, as more fully appears from the copy thereof herewith filed, and said plan of reorganization in fact received the implied assent and approval of this honorable court by its order passed on the 28th day of July, 1893, wherein the same was mentioned and referred to. And your petitioner avers that relying on said plan of reorganization and on the provision therein proposed to be made for the payment of all floating debt, including the debt of your petitioner, your petitioner has not hitherto insisted that the said masters should proceed to state an account whereby the respective priorities of the creditors should be ascertained.

IX. That your petitioner is informed and believes that the Central Trust Company of New York, the complainant in this cause, is in fact acting under the instructions of the committee engaged in promoting and carrying through said plan of reorganization and of said Drexel, Morgan & Co., their agents, and that the said complainant is in fact bound to act in accordance with the instructions of said committee, because the said committee have by holding forth the inducements set forth in the said plan of reorganization procured the possession and control of a large majority of the bonds mentioned in the bill of complaint filed by the said trust company in this cause. But your petitioner is advised that the said committee have no right to use the said bonds or to instruct the complainant to proceed otherwise than in accordance with said plan, and in fact, holding said bonds in trust and confidence, to use the same only for the purpose of carrying said plan into effect.

X. That your petitioner is informed and believes that, notwithstanding the premises, the said reorganization committee does not in fact intend to carry said plan into effect so far as concerns the payment of the claim of your petitioner and other creditors, although it was and is expressly stated that they would do so in their said plan as promulgated, and although the plan of reorganization as set forth proposes to give to the holders of the stock of the said defendant railroad company new securities in lieu of the stock so held by them, which your petitioner is advised is in violation and in fraud of the rights of the creditors of said defendant railroad company, if such debts shall not be paid.

XI. That your petitioner is informed and believes

that it is now the intention of the said complainant, acting under the instruction of the said committee, to ask this honorable court to pass an immediate decree or decrees of foreclosure whereunder all the property of said defendant railroad company shall be sold and bought in by the said committee, but said committee declines to state to your petitioner, and in fact professes itself unable to state whether or not it will in fact carry out said scheme of reorganization, as promulgated by it after it shall have bought in all the property of said defendant under said decrees, although, as your petitioner is informed and believes, settlements have been made with the great majority of the floating debt creditors of the railroad company.

XII. And your petitioner, on information and belief, further shows that, by the consent of the complainant, acting under the instructions of said committee and at its instance various orders have been passed and proceedings taken, without notice to your petitioner, whereby the said committee is enabled to set up a *prima facie* priority for certain claims held or controlled by said committee over the claims of the floating debt creditors, so that, if your petitioner is misinformed as to the facts necessary to give it a priority, it cannot protect itself of bidding at a sale without running the risk of being obliged to pay in full other claims having in law and justice no priority over your petitioner; and your petitioner is informed and believes that said orders were passed and proceedings had by reason of representations of facts, which facts your petitioner has had no opportunity to controvert, and cannot controvert after decree passed.

XIII. That your petitioner is advised, and, therefore, avers, that it is inequitable to permit the said complainant, acting on behalf of and representing the said reorganization committee, to proceed at this time to have such decree for sale, because the actings, doings and pretences of said reorganization committee have been such that your petitioner has been thereby induced to refrain from pressing its right to have the question of its equitable priority ascertained and adjudged so that it can in no wise protect itself if a sale should now be ordered, there having been no proceeding had from which it can discover whether it is in fact equitably entitled to payment in preference to said mortgage debt, or whether it is immediately subsequent thereto, and, if so subsequent, how many and what other claims are in like case. In case it should be held that your petitioner has no prior claim it desires to be in position to bid for the property at the sale. But, in fact, the act-

ings and doings of the said complainant in the premises have deprived your petitioner of all opportunity to protect its claim by bidding at a sale, if such sale should now be ordered, which your petitioner is advised it is inequitable and contrary to the practice of this honorable court that said complainant should be allowed to do.

Wherefore, your petitioner humbly prays that it be allowed to intervene as a party defendant to this cause for the protection of its interest therein, and that before any sale of the property the question whether or not its claim is, in fact, prior to that of the trustee for the said bondholders be determined, and that its rights in the premises generally be determined, and for such other and further relief in the premises as the nature of the case may require.

THE CARNEGIE STEEL CO., LIMITED.

By JOHN G. A. LEISHMAN,

Vice-Chairman.

UNITED STATES OF AMERICA, }
Southern District of New York. } ss.

John G. A. Leishman, being duly sworn, says that he is the Vice-Chairman of the Carnegie Steel Company, Limited; that the foregoing petition is true, save as to the matters therein stated to be alleged on information and belief, and that, as to those matters, he believes it to be true.

(Signed)

JOHN G. A. LEISHMAN.

Sworn to before me this 24th day of February, 1894.

{ Seal. }

F. W. LONGFELLOW,
Notary Public (171),
New York County, N. Y.

The contract attached to the foregoing petition and made a part thereof is in the words and figures following, to-wit:

CONTRACT.

This agreement, made and concluded this tenth day of June A. D., one thousand eight hundred and ninety-one, by and between Carnegie Brothers & Co., Limited, party of the first part, and the Richmond and Danville Railroad Company, party of the second part, Witnesseth:

First. The said first party, for and in consideration of the covenants and agreements undertaken to be kept,

done and performed by the second party, hereby agrees to furnish and deliver on board cars at Bessemer, Pa., twenty-five hundred (2,500) gross tons of first quality Bessemer steel rails made at its "Edgar Thompson Steel Works" of a standard pattern known as "Carnegie" No. —, and to weigh not less than 70 pounds per lineal yard. Ninety (90) per cent. of the rails are to be thirty (30) feet long and not more than ten (10) per cent. of shorter bars, and none less than 22 feet long, diminishing by 2 ft. successively. All of said rails are to be drilled for splice bars, according to directions of said second party, and shall have the initials of said first party's work and the year of manufacture rolled in prominent raised letters upon each rail.

Second. The said first party agrees to deliver the said twenty-five hundred (2,500) gross tons of rails during the month of July, 1891, said deliveries to be subject to delays from strikes, unavoidable accidents at works, or other causes beyond the control of the said first party.

Third. The said second party agrees to accept all rails delivered by said first party as herein provided, and to pay to the said first party thirty (30) dollars per gross ton therefor on scale weights, in its notes at four months from date of shipment without interest with privileges of one renewal for three months, with interest at the rate of 5 per annum, and a second renewal for three months with interest at the rate of 6 per annum, upon presentation at the office of the said second party, at 80 Broadway, New York, N. Y., of invoices and bills of lading covering same.

Fourth. The said second party hereby agrees to accept, if the first party elects to furnish them, not exceeding five per cent. of second quality rails in addition to the above mentioned twenty-five hundred tons at five per cent. less price than is herein named for rails of first quality, and agrees to pay for the said second quality rails in the manner above stipulated for first quality rails, and at the times when the payments for the first quality rails shipped during the same period shall become due.

Fifth. The said second party agrees to furnish to said first party at least one month prior to the time stated herein for the first delivery, drawings giving full and explicit information as to the pattern of rail with its drilling, and also agrees to furnish to said first party, at least one month prior to each monthly delivery hereinbefore contracted for, definite and complete shipping orders covering delivery to be made during such following month.

Sixth. Said second party has the option of increasing this contract 200 or 300 tons, making total quantity 2,700 or 2,800 tons; said option to be exercised on or before June 20th, 1891.

Seventh. Said first party guarantees that the rate of freight on said rails from Bessemer, Pa., to Strasburg, Va., shall not exceed \$1.75 per gross ton, if consigned to Lynchburg, Va.

Eighth. The said first party guarantees the wear of the rails for five years from the date they are laid in the track, and when any of said rails fail, either by breaking, or otherwise, when subjected to ordinary wear and usage of the road of the said second party, the said first party hereby agrees to replace all such rails so failing with new rails of the best quality, delivered at the same point as the original rails were delivered, it being mutually agreed that this guarantee shall apply only to cover breakage or failure resulting from defective material or workmanship.

In witness whereof the parties hereto have signed this agreement the day and year first above written.

NOTE.—By arrangement between John A. Rutherford, 3rd Vice-President, Richmond & Danville R. R. Co., and C. H. Odell, Sales Agent, June 15, 1891, option covered by clause 6 was exercised.

By arrangement between same parties, July 21, 1891, contract was further extended to cover 1,656 tons rails, at same price, terms and delivery.

By arrangement between same parties, Oct. 2, 1891, contract was further extended to cover 200 tons second quality rails, same terms, Oct. delivery, price \$26.00

Notes attached to and filed with foregoing petition are, respectively, as follows, to-wit:

NOTES.

(Copy.)

\$38,251.77

New York, March 21st, 1892.

Three months after date we promise to pay to the order of Carnegie Bros. & Co., "Limited," thirty-eight thousand two hundred and fifty-one 77-100 dollars at office Richmond & Danville R. R. Co., 80 Broadway, New York. Value received.

RICHMOND & DANVILLE R. R. CO.
JOHN A. RUTHERFORD,

3rd Vice-President.

No. —. Due June 21, 24, '92.

(Copy.)

\$35,499.38.

New York, March 24th, 1892.

Three months after date we promise to pay to the order of Carnegie Bros. & Co., "Limited," thirty-five thousand four hundred and ninety-nine 38-100 dollars at office Richmond & Danville R. R. Co., 80 Broadway, New York. Value received.

RICHMOND & DANVILLE R. R. CO.

JOHN A. RUTHERFURD,

3rd Vice-President.

No. —. Due June 24, 27, '92.

(Copy.)

\$12,786.16.

New York, April 4th, 1892.

Three months after date we promise to pay to the order of Carnegie Bros. & Co., "Limited," twelve thousand seven hundred and eighty-six 16-100 dollars at office Richmond & Danville R. R. Co., 80 Broadway, New York. Value received.

RICHMOND & DANVILLE R. R. CO.

JOHN A. RUTHERFURD,

3rd Vice-President.

No. —. Due July 4, 7.

(Copy.)

\$5,355.09.

New York, May 16th, 1892.

Three months after date we promise to pay to the order of Carnegie Bros. & Co., "Limited," five thousand three hundred and fifty-five 09-100 dollars at office Richmond & Danville R. R. Co., 80 Broadway, New York. Value received.

RICHMOND & DANVILLE R. R. CO.

JOHN A. RUTHERFURD,

3rd Vice-President.

No. —. Due Aug. 19, '92.

(Copy.)

\$33,174.99.

New York, June 7th, 1892.

Four months after date we promise to pay to the order

of Carnegie Bros. & Co., "Limited," thirty-three thousand one hundred and seventy-four 99-100 dollars at office Richmond & Danville R. R. Co., 80 Broadway, New York. Value received.

RICHMOND & DANVILLE R. R. CO.

JOHN A. RUTHERFURD,

3rd Vice-President.

No. —. Due Oct. 10, '92.

The statement of account of the Richmond and Danville Railroad Company with Carnegie Brothers & Company, Limited, attached to the foregoing petition of The Carnegie Steel Company, Limited, is in the words and figures following, to-wit :

STATEMENT.

Pittsburg, June 10th, 1893.

RICHMOND & DANVILLE RAILROAD CO.,

New York,

In account with

CARNEGIE BROTHERS & CO., LIMITED., DR.

For Steel Rails Shipped on Contracts Dated June 10th, 1891, and October 6th, 1891.

1891.					Ths. Contract.	
Ju	y	25.	419-0070 tons Rails	\$30.00,	\$12,570 94	56 June 10, '91.
"	"		52-0600 " " "	28.50,	1,489 63	56 " "
"	27.		563-1710 " " "	30.00,	16,912 90	56 " "
"	28.		73-0860 " " "	30.00,	2,201 52	56 " "
Aug.	14.		302-0580 " " "	30.00,	9,067 77	70 " "
"	15.		931-0370 " " "	30.00,	27,934 96	70 " "
"	"		43-1850 " " "	28.50,	1,249 04	70 " "
"	17.		720-2110 " " "	30.00,	21,628 26	70 " "
"	"		97-0510 " " "	28.50,	2,770 99	70 " "
"	18.		370-0010 " " "	30.00,	11,100 13	70 " "
"	20.		19-1240 " " "	30.00,	586 61	70 " "
"	21.		47-1360 " " "	30.00,	1,428 21	70 " "
"	24.		268-0060 " " "	30.00,	8,040 80	70 " "
"	25.		91-0040 " " "	30.00,	2,730 54	70 " "
"	29.		18-1680 " " "	30.00,	562 50	70 " "
Oct.	9.		136-1700 " " "	26.00,	3,555 73	70 Oct. 6, '91.
"	10.		47-1280 " " "	26.00,	1 236 86	70
4203 ⁰³⁵⁰ 2240 tons Rails for					\$125,067 39	

And on the same day, to-wit : At a Circuit Court of the United States for the Eastern District of Virginia, held at Richmond, in said district, on the 1st day of March, 1894, the following order was entered, viz. :

ORDER MAKING CARNEGIE STEEL COMPANY, LIMITED, PARTY DEFENDANT.

The Central Trust Company of New York and others,	Complainants,	} Consolidated Cause.
<i>vs.</i>		
The Richmond & Danville Railroad Com- pany and others,	Defendants.	

Upon reading the verified petition of the Carnegie Steel Company, Limited, it is by the court this first day of March 1894, ordered that the Carnegie Steel Company, Limited, be and it is hereby made and joined as a party defendant herein, and that the petition of the said company verified on the 24th day of February, 1894, be and the same is filed as and for its answer to the bills of complaint herein, and that the complainants have leave to plead thereto in due course.

N. GOFF,
Circuit Judge.

And on another day, to-wit: On the 8th day of March, 1894, came the complainants and filed their answer to the foregoing petition, which said answer is in the words and figures, following, to-wit:

ANSWER OF COMPLAINANTS TO PETITION OF CARNEGIE STEEL COMPANY, LIMITED.

Central Trust Company of New and others,	Complainants,	} Consolidated Cause.
<i>vs.</i>		
The Richmond & Danville Railroad Company and others,	Defendants	

In the matter of the intervening petition of the Carnegie Steel Company (Limited).

The Central Trust Company, William P. Clyde and others, complainants herein, for answer to the said petition claiming a preferential allowance out of the proceeds of the sale of the mortgaged property for rails sold to the railroad company, say:

They admit the purchase of such steel rails by the Richmond & Danville Railroad Company under the contract dated June, 1891, exhibited with such petition; they admit that the said Carnegie Steel Company (Limited) is a valid creditor of the said railroad company to the amount of \$125,067.39 by reason of the sale and delivery by it to said railroad company of the steel rails stated in said pe-

tion ; they admit the allegations of the second paragraph of said petition as to the change in the name of such creditor. The complainants deny the allegations of the third paragraph of the petition, and on the contrary thereof aver and stand ready to prove that the total amount of steel rails so sold and delivered by the intervenor to the said Richmond & Danville Railroad Company amounted to 4,202 1516-2240 tons ; that only 1,793 1180-2240 tons thereof were ever laid upon the road-bed, or track, of the Richmond and Danville railroad, which is covered by the mortgage sought to be foreclosed in this action. The remainder of the rail were laid as follows : 11,800 1000-2240 tons of such rails were used and laid in the tracks of the Northeastern railroad of Georgia ; 1,269 2230-2240 tons of such rails were laid in the track of the Virginia Midland railway, and 31 420-2240 tons of such rails were laid in the tracks of the Georgia Pacific railway, being the roads of separate corporations, each owning its own line of railroad, subject to divers separate mortgages executed by each of said companies, respectively, on its own road, appurtenances and franchises.

The complainants expressly deny that the said intervenor is, by reason of the purchase of steel rails by the Richmond and Danville Railroad Company, or the fact that the rails so bought were used and laid as aforesaid on the tracks of four different railroads, constitutes the intervenor a supply creditor of the Richmond and Danville Railroad Company having any lien whatever at law or in equity, either upon its income or upon its property, prior to the lien of the mortgage sought to be foreclosed in this action or any other mortgage executed by the said mortgagor corporation.

The complainants aver that in June, 1891, when the petitioner entered into a contract with the said railroad company to sell and deliver the rails stated in its petition, it then and there well knew that the said purchaser was a corporation engaged in operating a large system of railways owned, leased and controlled. At the time of such sale of rails there were five mortgages executed by said railroad company covering all its railroad, equipment, franchises and income. Being charged by the public record with notice of all such liens, the petitioner voluntarily entered into the contract on June, 1891, with such mortgagor corporation. In making such a contract, as is shown by the terms thereof, petitioner trusted exclusively to the personal responsibility and the continued solvency of its debtor. It exacted no security. There was no agreement or understanding that such rails should be paid

out of the current income of the road as a current expense of operating, like monthly pay-rolls or supply vouchers. On the contrary thereof, the said contract expressly provided that no cash payment should be required, and that a gross credit of at least ten months on the purchase-price of all such rails should be allowed without exacting any security whatever. The unpaid notes of said railroad company, exhibited with the petition, constitute the third or fourth renewal of the original obligations given for such rails. Complainants expressly deny that such rails, or any of them, constitute an operating expense of the road, in the proper sense of that term, chargeable as a preference against the current income of said railroad, or the income of the receivership. On the contrary thereof, the said petitioner then and there well knew that the rails so sold by it were to be laid in the track of the said Richmond and Danville railroad, or upon some one of its leased or operated lines, and would, on being so laid, necessarily be incorporated into such railroad, and become a physical and integral portion of the encumbered estate thereof. Such rails, so far as laid in the tracks of the Richmond and Danville railroad, instead of being an operating expense thereof, were a permanent improvement and betterment of the encumbered railroad. The 1,793 1180-2240 tons of rails so sold by the petitioner are now in the tracks of the Richmond and Danville railroad, and constitute an indispensable portion of the identical property upon which the mortgages executed by said railroad company are recorded paramount liens, and all the remainder of the rails so sold by the petitioner, constitute portions of the mortgaged property of the Northeastern railroad of Georgia, the Virginia Midland railway, and the Georgia Pacific railway.

The complainants deny that the mortgagee or the bondholders can be compelled, by degree, to pay for improvements voluntarily placed upon the mortgaged estate by the petitioner. The complainants further deny that the payment by the Richmond & Danville Railroad Company prior to the receivership of interest upon its bonded debts or any other of its maturing obligations constituted as to the petitioner any unlawful diversion of its current income, or created in it any equity to claim a priority over prior mortgages, either as to income or proceeds of sale; but the petitioner is merely an unsecured creditor for such debt without any lien, equity or charge upon such income, property or proceeds.

As to the allegations in the petition with regard to a proposed plan of reorganization, the complainants submit as matter of law that such averments are irrelevant, im-

material, and have no proper place in such petition; that either such plan or the committee in charge thereof are parties hereto, and that this court cannot entertain or adjudge any issue concerning the same, but that the rights and priorities of the mortgagee and the bondholders upon the mortgaged property and income must be adjudged exclusively upon the validity, record, and construction of such liens, and that the liens and equity of the intervenor upon the property covered by such recorded mortgages, audits, proceeds and income must be adjudged exclusively upon the character of its claim for having furnished material to improve the mortgaged property with full notice of recorded liens. For such reasons, all and singular, the averments in such petition as to such plan of reorganization ought to be treated as surplusage and stricken out.

The complainants further answering show that while, as against the petitioner, who sold material for permanent improvement of a mortgaged railroad, there has been and can be no diversion of current income of said railroad so as to create any equity or priority for it; the court has by orders entered in the cause allowed and paid all strict operating expenses incurred six months before the court, in June, 1892, originally appointed receivers in the suit of Wm. P. Clyde and others to the amount of nearly \$1,000,000, which liability is now represented by receivers' certificates, constituting a decreed first lien upon all mortgaged property, and since June, 1892, when such receivers were first appointed, the holders of the consolidated bonds, secured by the mortgage being foreclosed in this action, have not received any interest whatever out of the income of the property coming into the hands of the court, and the interest maturing and now unpaid on the different mortgages on the railroad and property, which have a recorded priority over the demand of the petitioner, amounts to over \$800,000, and the entire claim of the petitioner arose more than six months before the receivers were appointed in the Clyde case, and more than 18 months before the action was brought to foreclose the mortgage securing consolidated bonds.

Wherefore the complainants pray that as to any claim of equitable priority of the said Carnegie Steel Company (Limited) upon either the said railroad or its income, or the proceeds of the sale thereof under foreclosures, this petition be dismissed with costs.

BUTLER, STILLMAN & HUBBARD,
Solicitors for Central Trust Co.

HENRY CRAWFORD,
Sol. for Clyde et als.

And on another day, to-wit : On the 16th day of March, 1894, came the intervenor, the Carnegie Steel Company, Limited, and filed an amendment to its petition heretofore filed in this cause. Said amendment to petition is in the words and figures following, to-wit :

AMENDMENT TO PETITION OF CARNEGIE STEEL COMPANY, LIMITED.

The Central Trust Company of New York et al.,	Complainants,	}
<i>vs.</i>		
The Richmond & Danville Railroad Co. et als.,	Defendants.	}

Amendment to the Intervening Petition of The Carnegie Steel Company, Limited.

To the Honorable Judges of said Court :

The Carnegie Steel Company, as and for an amendment to its intervening petition, heretofore filed herein, by leave of court respectfully shows as follows :

The petitioner, under and by virtue of the contract, a copy of which is attached to its intervening petition, and which was dated June 10, "1891," and not "1892," as erroneously stated in paragraph I of said petition, and at the times specified in said intervening petition, namely : between July 25 and October 10, 1891, inclusively, furnished to the Richmond and Danville Railroad Company railroad iron necessary to the operation of the railway of said company of the total value of one hundred and twenty-five thousand and sixty-seven dollars and thirty-nine cents (\$125,067.39). Such railroad iron was furnished upon an agreement that the said Railroad Company should have therefor a credit of ten months from the time of the delivery of the same. On or about August 16, 1892, and before the expiration of six months after the petitioner's claim had fallen due, in a suit in this court, wherein William P. Clyde and others were complainants and The Richmond and Danville Railroad Company and others were defendants, being one of the consolidated causes herein, Frederick W. Huidekoper and Reuben Foster were appointed permanent receivers in the cause, and it was ordered by the court that M. F. Pleasants and Thomas S. Atkins be, and they thereby were; appointed special masters in chancery to hear evidence and take the necessary accounts, and to report to the court with all convenient speed the amount and nature of all the indebtedness of the

said Richmond and Danville Company, and whether secured by mortgage, pledge or other lien upon any portion of the corporate property, and, if so, on what portion, and the names of all creditors holding such demands; and further, that the said special masters should require all parties holding any indebtedness, claims or demands against the said Richmond and Danville Railroad Company, except holders of bonds secured by recorded mortgages on said property, to file their respective claims against said property with the said special masters at their office, in Richmond, Virginia, on or before December 1, 1892, to the end that the validity, amount and respective priorities upon the property and income thereof might be determined and reported on by the said special masters to the court. The petitioner presented and filed its aforesaid claim with said special masters accordingly.

The petitioner is advised, and believes, that by reason of the provisions of sec. 2485 of the Code of the State of Virginia, it has a prior lien on the franchises, gross earnings and on all the real and personal property of said Richmond and Danville Company which is used in operating the same to the extent of the moneys so due to the petitioner for such supplies, and that the mortgage or deed of trust, specified in the bill of complaint, inasmuch as the same has been executed since March 21, 1877, does not defeat or take precedence over said lien.

The petitioner is informed, and believes, still further, that the said mortgage has never been recorded pursuant to the requirements of the statutes of the State of Virginia, and denies the allegations of the bill of complaint to the effect that such record has been made.

Wherefore, the petitioner humbly prays that it be allowed to file the foregoing petition as an amendment to its intervening petition, now on file herein, and that it may be adjudged and decreed that its claim is, in fact, prior to that of the trustees for the said bondholders, and that its rights in the premises generally be determined, and for such other and further relief in the premises as the nature of the case may require.

THE CARNEGIE STEEL COMPANY,
LIMITED.

By JOHN G. A. LEISHMAN,
Vice-Chairman.

NICHOLAS P. BOND.

UNITED STATES OF AMERICA. } ss :
District of

John G. A. Leishman, being duly sworn, says that he is the Vice-Chairman of the Carnegie Steel Company, Limited; that the foregoing petition is true, save as to the matters therein stated to be alleged on information and belief, and that as to those matters, he believes it to be true.

JOHN G. A. LEISHMAN.

Sworn to before me this 12th day of March, 1894.

ALBERT H. EANES,
Notary Public.

{ Seal. }

And on another day, to-wit: on the 19th day of May, 1894, came the special masters heretofore appointed in this cause, and filed in the Clerk's Office of said Circuit Court their report on the claim of The Carnegie Steel Company, Limited, which report is as follows, to-wit:

SPECIAL MASTERS' REPORT.

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF
VIRGINIA.

The Central Trust Company of
New York et al.
vs.
The Richmond & Danville R.
R. Company et als.

Consolidated Cause,
In Equity.

OFFICE OF SPECIAL MASTERS,
Richmond, Va., May 18th, 1894.

Upon the claim of the Carnegie Steel Company, Limited.

To the Honorable Judge of said Court:

The facts relating to this claim are as follows:

On the 10th day of June, 1891, the Carnegie Brothers and Co., Limited., of which the Carnegie Steel Company, Limited, is the successor, entered into an agreement with the Richmond & Danville Railroad Company which provides among other things as follows: "The said party of the first part hereby agrees to furnish and deliver on board cars at Bessemer, Pa., twenty-five hundred gross tons of first quality Bessemer steel rails during the month of July, 1891. The said party of the second

part agrees to accept all rails delivered by the said first party as herein provided, and to pay to the said first party \$30 per gross ton therefor, in its notes at four months from date of shipment, without interest, with privilege of one renewal for three months with interest at the rate of five per cent. per annum and a second renewal for three months with interest at the rate of 6 per cent. per annum, upon presentation at the office of the said party of the second part at 80 Broadway, of invoices and bills of lading covering same."

This agreement further authorizes the supply of 5 per cent. additional of second quality rails at 5 per cent. less price to be paid for in the same manner as above; and also gives the said railroad company the option of increasing this contract 200 or 300 tons, if exercised on or before June 20, 1891, which was duly exercised on June 15, 1891.

On July 1st, 1891, the said agreement was further extended by arrangement between the parties, to cover 1656 tons of rails at the same price, terms and delivery; and on October 2nd, 1891, was further extended to cover 200 tons of 2nd quality rails, same terms, October delivery, price \$26.

In accordance with said contract the said claimant delivered to the Richmond & Danville R. R. Co., between the 25th of July and the 10th of October, 1891, 4,203-350 tons of rails which were used by the Richmond & Danville R. R. Co. and laid upon the following lines:

On N. E. R. R. of Georgia,	1108.5 tons,	56 lb.,	\$	33,174.99
" V. M. Ry.,	1270	" 70 "		37,713.15
" R. & D. R. R.,	1793.5	" 70 "		53,258.69
" G. P. Ry.,	31.2	" 70 "		920.56
				<hr/>
				\$125,067.39

For which said amount the railroad company gave to the petitioner its promissory notes due at various times, and which notes were renewed from time to time, the last renewals of which matured subsequent to the appointment of the receivers in the original case of Clyde et al. vs. The Richmond & Danville Railroad Company, as appears from the following statement:

Note dated March 21, 1892,	3 mos.	\$	38,251.77
" " " 24, 1892,	3 "		35,499.38
" " April 4, 1892,	3 "		12,786.16
" " May 16, 1892,	3 "		5,355.09
" " June 7, 1892,	4 "		33,174.99
			<hr/>
			\$125,067.39

The claimants assert priority for their claim as against the holders of the mortgage bonds who are represented in this litigation by the Central Trust Company, on two grounds :

First. The general equitable principle that the earnings of the company which should have been used for the payment of the claim have been diverted for the benefit of the bondholders, and therefore the claim should now be paid out of the funds in the hands of the receivers, or from the purchase money under foreclosure sale ; or if that is not sufficient, by the court's retaking the property and ordering a re-sale for the benefit of intervenors ; and

Second. Priority of lien under the Virginia statute.

As to the first ground. Your commissioners think it only necessary for them to refer the court to the case of *F. W. Bound vs. The South Carolina Ry. Co.*, decided October 3d, 1893, by Chief Justice Fuller and Judges Hughes and Morris, in the Circuit Court of Appeals for this circuit, in which the facts were almost identical with those in this case. The claim there was for steel rails purchased 18 months before the appointment of a receiver, for which notes were given, on which partial payments were made, with renewals for the balance until receivers were appointed. During the running of these notes money was borrowed by the Railroad Company and paid to the bondholders as interest on their bonds. This was claimed to be a diversion and the court below so held. The Court of Appeals, however, decided that the Circuit Court for the District of South Carolina, in which the suit was originally brought, was in error in so holding. That court says : " The debt of the Lackawanna Co. was an ordinary merchandise debt evidenced by notes which were renewed from time to time. It had no stronger equity or claim upon the earnings than had those who had advanced money to pay the interest on the bonds. The Railway Company was struggling with financial difficulties, and no doubt the effort to raise money to pay interest and prevent foreclosure was intended for the benefit of all the floating debt creditors."

* * * * *

"The railroad property being heavily mortgaged all that any unsecured creditor had to look to for payment was the earnings. The immediate earnings, it is clear, the Lackawanna Company did not look to, as the sale was upon a credit of eight months. It must be inferred, therefore, that it was expected that interest on the mortgage debt was

meanwhile to be paid during the running of the credit; otherwise a foreclosure would have been imminent. The claim is quite different from those ordinary and necessary current expenses of operating the railroad, contracted but a short time before the receivership, and which by the sudden action of the court in appointing a receiver are left unpaid." "It is true that the promise was to pay out of the earnings, and it is also true that out of those earnings to the extent decreed to have priority, interest was paid to the bondholders. But it is also true that by granting an original credit of eight months, and by extending that credit over a period in all amounting to eighteen months, the Lackawanna Company must have contemplated that during that period the interest falling due on the mortgage bonds was to be kept paid out of the earnings so that the road would remain in the hands of the railway corporation." This decision, it will be observed, refers only to a diversion by the payment of interest on bonds, but we can see no reason why it should not apply to and cover all diversions claimed in this petition. We think, therefore, that the petitioner is not entitled to the priority claimed on his first ground.

The Virginia statute relied upon by the petitioner as his second ground, has been construed by this court in the case of *Newgass vs. The Atlantic & Danville Railway Co.*, decided by Judges Goff and Hughes June 13th, 1893.

In that case the court says: "This act went into effect May 1, 1888. After that anyone who bought bonds of a Virginia railroad did so with the constructive knowledge that those who furnished supplies to the railroad were entitled to priority of payment." * * * "Hence the finding of the master that only the bonds issued before May 1st, 1888, were a prior lien * * * is clearly right." * * * "The only requisite of the statute which it was claimed the supply creditors have not followed is the assertion that the statute requires the memorandum of lien to be filed within six months after the supplies were furnished." The language of the statute is as follows: "No person shall be entitled to the lien given him by the preceding section unless he shall within six months after his claim has fallen due file * * * the memorandum," &c.

"This statute is too plain to bear discussion. The date of furnishing the supplies has nothing to do with it. It is governed by the date when the claim matures. If the claim is payable in instalments, the statute means six months after the last instalment is due; for the claim has certainly not fallen due until all the instalments are due.

If the supplies are furnished under a single contract, the purchase-money of which is divided into instalments, no matter how numerous those instalments may be, and not under separate contracts, with separate considerations, then the claims has not fallen due until all the instalments are due." * * * "It follows, therefore, that these supply creditors have a lien, along with the other supply creditors, upon the railroad and its property."

As to the another claim in the same case, the court also decides "that the failure to file it within six months after it had fallen due is not fatal, inasmuch as the decree for account was entered by the court within that period." "It has been held in *Seventh National Bank vs. Shenandoah Iron Co.*, 35 Fed. Rep., 436, that a decree for account suspends the running of the six months in such a case. We are of the same opinion."

In accordance with the foregoing, the claim of the Carnegie Steel Co. became due on the 7th of October, 1892, that being the date on which the last instalment fell due, and was filed with the special masters on October 29th, 1892. The decree for account and appointing special masters to take said account was entered August 16th, 1892.

Accordingly, the special masters hold that the lien of the petitioner is established as prior to that of all bonds issued after May 1st, 1888.

The mortgage under which these bonds were issued is dated October 22nd, 1886, and, according to an agreed stipulation filed in this case by the respective solicitors for the Central Trust Company and the Carnegie Steel Company it appears that bonds to the amount of \$1,621,000 were issued prior to May 1, 1888, and bonds to the amount of \$2,906,000 have been issued since that date.

Applying the rulings of the court in the Newgass case to the facts in this case, the special masters are of opinion that the petitioner is entitled to a lien upon the proceeds of the sale of the Richmond and Danville Railroad Company next after that of the \$1,621,000 of bonds issued, as above stated, prior to May 1st, 1888.

All of which is respectfully submitted.

M. F. PLEASANTS,
THOS. S. ATKINS,

Special Masters.

STIPULATIONS WITH COUNSEL OF CARNEGIE STEEL CO.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

The Central Trust Company of New York,	}
Complainant,	
<i>vs.</i>	}
The Richmond and Danville Railroad Company,	
Defendant.	

It is hereby stipulated and agreed, that the list of bonds delivered, hereto attached, contains a correct statement of the facts regarding the issue and delivery by the Central Trust Company of the bonds of the Richmond and Danville Company, known as the Consolidated Bonds, and secured by the consolidated mortgage attached to the bill of complaint herein.

It is also stipulated and agreed, that there are now in the hands of the Central Trust Company, as custodian under the plan of reorganization referred to in the intervening petition of the Carnegie Steel Company, and a copy of which is thereto attached, such consolidated bonds to the amount of \$2,959,000, for which engraved certificates have been issued and countersigned by the Trust Company pursuant to the provisions of said plan of reorganization.

Dated New York, March 20, 1894.

BUTLER, STILLMAN & HUBBARD,

Sol'rs for C. T. Co.

NICHOLAS P. BOND,

Sol. for Carnegie Steel Co., Lim.

CARNEGIE STEEL CO., LIMITED, APPELLEE.

THE RICHMOND AND DANVILLE R. R. CO.

List of Bonds Delivered.

1887.	WHOSE ORDER.		DELIVERED TO.	NUMBERS.	AMOUNT.
Jan. 15	In Ex. for	Debentures.		11 at 42	\$ 32,000
18	do.	do.		43 " 49	
				51 " 73	30,000
20	do.	do.		74 " 161	88,000
24	do.	do.		50-162 at	
				215	55,000
Feb. 4	do.	do.		216 at 230	15,000
5	do.	Scrip.		231	1,000
9	do.	do.		238	1,000
				232 " 237	
				239	
10	do.	Debentures.		240 " 247	15,000
16	do.	do.		248 " 252	5,000
17	do.	do.		253 " 275	23,000
19	do.	do.		276 " 280	5,000
21	do.	do.		281 " 298	18,000
23	do.	do.		299 " 300	2,000
25	do.	do.		301 " 307	7,000
Mch. 1	do.	do.		308 " 335	28,000
2	do.	do.		336 " 339	4,000
4	do.	do.		340 " 341	2,000
7	do.	do.		342 " 352	11,000
10	do.	do.		353 " 354	2,000
11	do.	do.		355 " 357	3,000
12	do.	do.		358 " 368	11,000
18	do.	do.		369 " 370	2,000
"	do.	do.		371 " 417	47,000
To 22	do.	do.		418 " 419	2,000
Mch. 26	do.	do.		420 " 424	5,000
28	do.	do.		425	1,000
29	do.	do.		426 " 486	61,000
30	do.	do.		487 " 489	3,000
				490 " 491	
31	do.	Scrip.		492	3,000
6	do.	do.		493	1,000
Apr. 16	do.	Coupons.		501 " 819	319,000
18	do.	do.		494 " 499	6,000
				820 " 960	
19	do.	do.		500	142,000
21	do.	do.		961 " 977	17,000
22	do.	do.		978 " 979	2,000
25	do.	do. and Scrip.		980 " 983	4,000
26	do.	Coupons.		984 " 1011	28,000
29	do.	do. and Scrip.		1012 " 1032	21,000
May 2	do.	do. do.		1033 " 1055	23,000
3	do.	do. do.		1056 " 1077	22,000
4	do.	do. do.		1078 " 1084	7,000
5	do.	Coupons.		1085 " 1086	2,000
7	do.	do. and Scrip.			
		\$100 cash.		1087	1,000
16	do.	Coupons.		1088 " 1089	2,000
17	do.	do.		1090	1,000
18	do.	Scrip.		1091	1,000
24	do.	Coupons.		1092	1,000
26	do.	do.		1093 " 1099	7,000

\$1,089,000

List of Bonds Delivered (CONTINUED).

1887.	WHOSE ORDER.	DELIVERED TO.	NUMBERS.	AMOUNT.
			Brought forward	\$1,089,000
June 1	In Ex. for Debentures, Coups.		1100 at 1121	22,000
9	do. Scrip.		1122	1,000
15	do. Deb. and Coups.		1123 " 1136	14,000
22	do. do. Scrip.		1137 " 1154	18,000
Sept. 21	do. Scrip.		1155	1,000
Oct. 8	do. Deb. and Coups.		1 " 2	2,000
10	do. do. do.		3 " 5	3,000
11	do. do. do.		6 " 7	2,000
14	do. Scrip.		8	1,000
Dec. 1	do. Deb. Coups.		1156 " 1168	13,000
	Scrip.		1169 " 1170	2,000
1888.				
Jan. 10	do. Cfs.		1171	1,000
11	do. Deb. Coups.		1172	1,000
"	do. do. Bonds.		1173 " 1177	5,000
19	do. Scrip.		1178 " 1179	2,000
27	do. do.		1180 " 1181	2,000
31	do. do.		1182 " 1185	4,000
Feb. 7	do. do.		1186	1,000
Mch. 23	do. do.		1187	1,000
24	do. do.		1188	1,000
29	do. Deb. Coups.		1189 " 1195	7,000
31	do. do.		1201 " 1204	4,000
"	do. Scrip.		" 1205	1,000
Apr. 2	do. Deb. Coups.		1206 " 1254	49,000
11	do. do.		1196 " 1200	
14	Geo. S. Scott, Oct. '88 Coup. Att.		1255 " 1273	24,000
May 4	In Ex. for Scrip.		1351 " 1700	350,000
14	do. Deb. Scrip.		1274	1,000
23	do. Scrip.		1275 " 1296	22,000
25	do. Deb. Coups.		1297	1,000
June 9	do. do.		1298	1,000
"	do. Scrip.		1299 " 1301	3,000
21	do. Deb. Coups.		1302	1,000
			1303	1,000
July 9		With Oct. '87.		
"	do. Scrip.	A. T. Raub, Ass't Sec'y.	1304 " 1336	33,000
12	do. Deb. Bonds.		1337	1,000
	Unsigned by R. R. Co.		1338 " 1350	13,000
25		A. T. Raub, Ass't Sec'y.	1701 " 1722	22,000
Aug. 7	In Ex. for Scrip all Coups. on		1723 " 1880	158,000
31			1881	1,000
"	do. Deb. Coups.	Oct. '88, Coups.		
		R. T. Raub, Ass't Sec'y.	1882 " 1981	100,000
Sept 7		" " "	9 " 10	2,000
18	do. do.	Simon Booz & Co.	1982 " 2081	100,000
27	do. Bonds.		2082 " 2083	2,000
			2084 " 2086	3,000
Oct. 8	do. Coups.	Apr. '87, Coups. on		
18		" '89.	2087	1,000
24	do. Scrip.	A. T. Raub, Ass't Sec'y.	2088 " 2222	135,000
Nov. 9			2223	1,000
Dec. 8	do. Coups.	A. T. Raub, Ass't Sec'y.	2224 " 2300	77,000
"	do. Scrip.	A. T. Raub.	2301 " 2304	4,000
			2321 " 2323	3,000

\$2,307,000

List of Bonds Delivered (CONTINUED).

1888.	WHOSE ORDER.	DELIVERED TO.	NUMBERS.	AMOUNT.
		Brought forward		\$2,307,000
Dec. 10	In Ex. for Scrip.		2324	1,000
1889.				
Jan. 5	do. Coups.	Apr. '89, Coup. on	2306	1,000
Feb. 14	do. Deb. Bonds	R. T. Raub, Ass't Sec'y.	2307 at 2320	
Mch. 14		"	2325 " 2360	50,000
Apr. 23	do. do.	"	2361 " 2437	77,000
May 7	In Ex. High Pt. R. Ashboro &	Laidlaw & Co.	2438 " 2517	80,000
		So. R. R. Co.		
		A. T. Raub, A. Sec'y.	2518 " 2727	210,000
June 7	do. Deb. Geo. S. Scott, Oct. '89, Cps.		2728 " 2777	50,000
July 25		A. T. Raub, A. Sec., All Cps.	2778 " 2960	192,000
Oct. 8	for Scrip.	Apr. '90.	2305	1,000
1890.				
July 12	do. & Co.	Oct. '87.	2970	1,000
1891.				
Jan. 2	Yadkin R. R.	F. W. Paris, Apr. '91.	2971 " 3240	270,000
Apr. 22	do.	F. W. Paris, Oct. '91.	3241 " 3435	195,000
June 18	do.	R. D. R. R., Oct. '91.	3436 " 3585	150,000
30	John A. Rutherford, 3rd V. P.	R & D. R. R. Co., Oct. '91.	3586 " 3765	180,000
	N. Car. Mid Bonds.			
Aug. 5	do. Dan. & West.	" "	3766 " 4250	485,000
"	do. do.			
		Oct. '91,	4251 " 4317	67,000
		to 4350 and		
Sept. 30	No. Car. Mid. Bonds.	Apr. '92, thereafter.	4318 " 4437	120,000
Nov. 4	A. B. Andrews, V. P. M. Do.	"	4438 " 4497	60,000
1892.				
Mch. 3	do. do. Do.	"	4498 " 4527	30,000
				\$4 527 000

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York

vs.

Richmond & Danville Railroad Company.

Wm. P. Clyde and others,

vs.

Richmond and Danville Railroad Company and others.

In Equity.
Consolidated
Cause.

Examination of Capt. W. H. GREEN before Messrs. Pleasants and Atkins, special masters, March 22nd, 1894, in Washington, D. C.

Present : Mr. Henry Crawford, for the complainants ; Mr. N. P. Bond, for the Carnegie Steel Company ; Mr. Hugh L. Bond, Jr., for the receivers.

By Mr. CRAWFORD : Were you in charge of the Danville system, as general manager, at the time of the appointment of the receivers of the Central Railroad and Banking Company of Georgia? A. Yes, sir.

Q. Do you remember the date of that? A. I think it was March 4, 1892, when the first receiver was appointed.

Q. The first receiver was General Alexander? A. Yes, sir.

Q. Since that date, has the Richmond & Danville operated any part of the Central of Georgia system, so called, or received any of the income of that road that had been earned prior to the appointment of the receiver? A. I do not think we have operated any part of it since then. As far as the income is concerned, I cannot tell you.

Q. Have you approved any vouchers for payment of claims on account of the Central of Georgia? A. I do not remember.

Q. How is it as to whether or not there was a large amount of material, shop supplies, station supplies, machine shop supplies, road supplies, and bridge supplies along the line of the Central of Georgia System at the time the receiver was appointed? A. Well, we had an inventory taken at the time the receiver was appointed. Everything was very complete, I think, except in the case of coal. That was not as complete as I would like to have had it. There was a large amount of supplies on hand at that time.

Q. Speaking in general terms, you may state whether the amount of operating material, supplies, stock on hand,

etc., etc., at the time of the appointment of receiver of the Central of Georgia was or was not much larger than at the time of the lease, on June 1, 1891, when the road was leased to the Georgia Pacific? A. When the road was leased, or rather when the R. & D. took charge to operate it for the Georgia Pacific, I had my hands full of other matters, and I placed Mr. McBee in charge of that property as general superintendent. Whether his inventory was full, I cannot say, and whether we left more material on the road than we received from the Central Company, I am not prepared to say.

Q. Do you or do you not remember that the material on hand at the time of the lease in June, 1891, on the Central of Georgia System was largely unpaid for, and that subsequently the Danville Company had to pay for the same? A. That is in accordance with my recollection.

Q. So far as you know, did the Danville Company receive any income on account of the Central of Georgia's operations that had accrued and been earned prior to March 4, 1892, but collected afterwards? A. I think not, sir.

W. H. GREEN.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

Central Trust Company of New York	}	In Equity. Consolidated Cause.
<i>vs.</i>		
Richmond and Danville Railroad Com- pany.		
William P. Clyde et al.		
<i>vs.</i>		
Richmond and Danville Railroad Com- pany et al.		

Present: Mr. Henry Crawford, for the complainants; Mr. Nicholas P. Bond, for the Carnegie Steel Co., Limited; Mr. Hugh L. Bond, Jr., for the receivers.

Examination of Mr. A. S. DUNHAM before Messrs. M. F. Pleasants and Thomas S. Atkins, Special Commissioners, at Washington, D. C., March 22nd, 1894.

By Mr. CRAWFORD: Please state your name and residence, Mr. Dunham. Alanson S. Dunham; residence, Washington, D. C.

Q. Have you any official connection with the receivership of the Richmond and Danville railroad; and if so, how long have you had such connection, and what is it? A. I

have been in the employ of the receivers of the Richmond and Danville railroad since Sept., 1892, as comptroller.

Q. As such officer, have you general charge, supervision and control over the vouchers, accounts, records and account books of the receivership and of the company that preceded it—the R. & D. Company? A. Yes, sir.

Q. How long have been been a railway accountant? A. About 30 years.

Q. Have you caused any examination to be made of the records, vouchers and papers of the Richmond and Danville railroad in the custody of the receivers undertaking to show the past due voucher indebtedness of that company? A. Yes, sir.

Q. Have you caused to be prepared, under your supervision and direction, any statement undertaking to show the amount of such unpaid voucher indebtedness of the Danville Company? A. Yes, sir.

Q. Have you made a statement of the classification of the claims filed before the masters for allowance in the receivership case against the Richmond and Danville Railroad Company? A. Yes, sir.

Q. Where is that statement? A. It is in my possession, and is now submitted to the special masters (marked Exhibit "A," and attached to Mr. Dunham's testimony).

Q. Now, you can explain in a concise way the nature of this statement? A. The statement shows, first, the name of the creditor who filed the claim before the masters, and next, the general character of the claim and the amount claimed to be due by the creditor filing. In the sub-division under the general heading, "Records of the Richmond and Danville Railroad," in the column headed "R & D.," the amount there stated represents the material, labor, etc., included in the claim opposite to which it is placed, that was used purely for the account of the Richmond and Danville railroad, or the lines in that system, prior to December 17, 1891. The next column, headed "C. R. R.," represents the proportion of such claims that is chargeable, according to the R. & D. vouchers and papers, to the lines of the Central Railroad of Georgia system, being for material, labor, etc., used on that system at any time before March 4, 1892. The column headed "Macon and Northern" represents the same information, as shown by the R. & D. books, as has been stated in regard to the Central railroad. The next column represents amounts that have been paid on such filed claims subsequent to their filing. In the column headed "No Record,"

List of Bonds Delivered (CONTINUED).

1888.	WHOSE ORDER.	DELIVERED TO.	NUMBERS.	AMOUNT.
			Brought forward	\$2,307,000
Dec. 10 1889.	In Ex. for Scrip.		2324	1,000
Jan. 5	do. Coups.			1,000
Feb. 14	do. Deb. Bonds.	Apr. '89, Coup. on	2306	
Apr. 23		R. T. Raub, Ass't Sec'y.	2307 at 2320	
Mch. 14	do. do.	"	2325 " 2360	50,000
Apr. 23	do. do.	Laidlaw & Co.	2361 " 2437	77,000
May 7	In Ex. High Pt. R. Ashboro &	So. R. R. Co.	2438 " 2517	80,000
June 7	do. Deb. Geo. S. Scott, Oct. '89, Cps.	A. T. Raub, A. Sec'y.	2518 " 2727	210,000
July 25		A. T. Raub, A. Sec., All Cps.	2728 " 2777	50,000
Oct. 8	for Scrip.	Apr. '90.	2778 " 2960	192,000
1890.			2305	1,000
July 12 1891.	do. & Co.	Oct. '87.	2970	1,000
Jan. 2	Yadkin R. R.	F. W. Paris, Apr. '91.	2971 " 3240	270,000
Apr. 22	do.	F. W. Paris, Oct. '91.	3241 " 3435	195,000
June 18	do.	R. D. R. R., Oct. '91.	3436 " 3585	150,000
June 30	John A. Rutherford, 3rd V. P.			
	N. Car. Mid Bonds.	R & D. R. R. Co., Oct. '91.	3586 " 3765	180,000
Aug. 5	do. Dan. & West.	" "	3766 " 4250	485,000
"	do. do.	" "		
		Oct. '91,	4251 " 4317	67,000
		to 4350 and		
Sept. 30	No. Car. Mid. Bonds.	Apr. '92, thereafter.	4318 " 4437	120,000
Nov. 4 1892.	A. B. Andrews, V. P. M. Do.	"	4438 " 4497	60,000
Mch. 3	do. do. Do.	"	4498 " 4527	30,000
				\$4 527 000

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York

vs.

Richmond & Danville Railroad Company.

Wm. P. Clyde and others,

vs.

Richmond and Danville Railroad Company and others.

In Equity.
Consolidated
Cause.

Examination of Capt. W. H. GREEN before Messrs. Pleasants and Atkins, special masters, March 22nd, 1894, in Washington, D. C.

Present : Mr. Henry Crawford, for the complainants ; Mr. N. P. Bond, for the Carnegie Steel Company ; Mr. Hugh L. Bond, Jr., for the receivers.

By Mr. CRAWFORD : Were you in charge of the Danville system, as general manager, at the time of the appointment of the receivers of the Central Railroad and Banking Company of Georgia? A. Yes, sir.

Q. Do you remember the date of that? A. I think it was March 4, 1892, when the first receiver was appointed.

Q. The first receiver was General Alexander? A. Yes, sir.

Q. Since that date, has the Richmond & Danville operated any part of the Central of Georgia system, so called, or received any of the income of that road that had been earned prior to the appointment of the receiver? A. I do not think we have operated any part of it since then. As far as the income is concerned, I cannot tell you.

Q. Have you approved any vouchers for payment of claims on account of the Central of Georgia? A. I do not remember.

Q. How is it as to whether or not there was a large amount of material, shop supplies, station supplies, machine shop supplies, road supplies, and bridge supplies along the line of the Central of Georgia System at the time the receiver was appointed? A. Well, we had an inventory taken at the time the receiver was appointed. Everything was very complete, I think, except in the case of coal. That was not as complete as I would like to have had it. There was a large amount of supplies on hand at that time.

Q. Speaking in general terms, you may state whether the amount of operating material, supplies, stock on hand,

etc., etc., at the time of the appointment of receiver of the Central of Georgia was or was not much larger than at the time of the lease, on June 1, 1891, when the road was leased to the Georgia Pacific? A. When the road was leased, or rather when the R. & D. took charge to operate it for the Georgia Pacific, I had my hands full of other matters, and I placed Mr. McBee in charge of that property as general superintendent. Whether his inventory was full, I cannot say, and whether we left more material on the road than we received from the Central Company, I am not prepared to say.

Q. Do you or do you not remember that the material on hand at the time of the lease in June, 1891, on the Central of Georgia System was largely unpaid for, and that subsequently the Danville Company had to pay for the same? A. That is in accordance with my recollection.

Q. So far as you know, did the Danville Company receive any income on account of the Central of Georgia's operations that had accrued and been earned prior to March 4, 1892, but collected afterwards? A. I think not, sir.

W. H. GREEN.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT
OF VIRGINIA.

Central Trust Company of New York

vs.

Richmond and Danville Railroad Com-
pany.

William P. Clyde et al.

vs.

Richmond and Danville Railroad Com-
pany et al.

In Equity.
Consolidated
Cause.

Present: Mr. Henry Crawford, for the complainants; Mr. Nicholas P. Bond, for the Carnegie Steel Co., Limited; Mr. Hugh L. Bond, Jr., for the receivers.

Examination of Mr. A. S. DUNHAM before Messrs. M. F. Pleasants and Thomas S. Atkins, Special Commissioners, at Washington, D. C., March 22nd, 1894.

By Mr. CRAWFORD: Please state your name and residence, Mr. Dunham. Alanson S. Dunham; residence, Washington, D. C.

Q. Have you any official connection with the receivership of the Richmond and Danville railroad; and if so, how long have you had such connection, and what is it? A. I

have been in the employ of the receivers of the Richmond and Danville railroad since Sept., 1892, as comptroller.

Q. As such officer, have you general charge, supervision and control over the vouchers, accounts, records and account books of the receivership and of the company that preceded it—the R. & D. Company? A. Yes, sir.

Q. How long have been been a railway accountant? A. About 30 years.

Q. Have you caused any examination to be made of the records, vouchers and papers of the Richmond and Danville railroad in the custody of the receivers undertaking to show the past due voucher indebtedness of that company? A. Yes, sir.

Q. Have you caused to be prepared, under your supervision and direction, any statement undertaking to show the amount of such unpaid voucher indebtedness of the Danville Company? A. Yes, sir.

Q. Have you made a statement of the classification of the claims filed before the masters for allowance in the receivership case against the Richmond and Danville Railroad Company? A. Yes, sir.

Q. Where is that statement? A. It is in my possession, and is now submitted to the special masters (marked Exhibit "A," and attached to Mr. Dunham's testimony).

Q. Now, you can explain in a concise way the nature of this statement? A. The statement shows, first, the name of the creditor who filed the claim before the masters, and next, the general character of the claim and the amount claimed to be due by the creditor filing. In the sub-division under the general heading, "Records of the Richmond and Danville Railroad," in the column headed "R & D.," the amount there stated represents the material, labor, etc., included in the claim opposite to which it is placed, that was used purely for the account of the Richmond and Danville railroad, or the lines in that system, prior to December 17, 1891. The next column, headed "C. R. R.," represents the proportion of such claims that is chargeable, according to the R. & D. vouchers and papers, to the lines of the Central Railroad of Georgia system, being for material, labor, etc., used on that system at any time before March 4, 1892. The column headed "Macon and Northern" represents the same information, as shown by the R. & D. books, as has been stated in regard to the Central railroad. The next column represents amounts that have been paid on such filed claims subsequent to their filing. In the column headed "No Record,"

the black figures indicate the proportion of the filed claim, of which there is no record in the accounts of the Richmond and Danville Railroad. The red-ink figures indicate that the account as filed before the masters is less than the account, as shown by the records of the Richmond and Danville Railroad Company. The "Offsets" column represents the accounts that the Richmond and Danville records show as due from the claimant. The interest column represents the amount of interest that has been included in the claim as filed.

Q. Have you prepared a general summary of the total footings of this statement? A. Yes, sir.

Q. That is attached to the statement; is it not? A. It is.

Q. Has this statement, and the aggregate summary, been prepared with care and circumspection? A. It has.

Q. What length of time has been consumed by you and your clerical assistants in preparing this statement? A. The prepared records from which the information that is grouped in this statement was taken has been the subject of fully a year's labor in preparing. The particular statement I have referred to and marked Exhibit "A" has occupied about ten days.

Q. In this preparation you made use of this information which you had been solely acquiring for about a year? A. Yes, sir.

Q. In your judgment, is this statement or summary prepared the whole, true and correct exhibit of the nature and amount of the claims, and the classification of the character that you have indicated? A. Yes, sir.

Q. You may state whether this account does or does not include the accounts for traffic and other balances between railroads. A. It does not; but we are preparing a further statement that covers this information of the indebtedness as between railroads.

Q. Since the receivership you may state whether or not there has not been a very great shifting of the amount due on those balances, as between the Danville and the other lines. A. Yes, sir. It has been changing almost monthly.

Q. So that a claim of one of those lines for traffic balances filed a year or eighteen months ago, might not exist at all; or if at all, only in a very small amount, at the present time? A. Yes, sir; that is exactly the situation as to those accounts.

Q. This statement which you are now preparing, as I

understand you, will embrace a statement of the accounts of the Danville road, anterior to the receivership, and the lines that it had interchanged accounts with, and will embrace loss and damage claims, traffic balances, ticket balances, car service, car repairs, etc., etc. A. Yes, sir.

Q. What is the usual method adopted by railroad companies, as between themselves, in stating and adjusting such accounts? A. The detailed account as shown by the books is first rendered and submitted for examination by the opposite party. After such examination it is returned with any notations as to differences, which are then taken up between the two roads and disposed of, after which additional statements are rendered to see that all differences have been adjusted, and if so, the account is certified to as correct and ready for settlement. In the case of such accounts as have been upon the books of the Richmond & Danville Railroad Company, which have been running for so long a time as they have without any adjustment, it becomes a very difficult and laborious task to reach a final conclusion with the various companies as to the exact balances that are due, lapse of time making it difficult, in many instances, to get the information necessary to properly pass upon the items in dispute.

Q. Since you have been comptroller for the receivers, has there not been correspondence on your part with the auditing departments of other roads, with the view of adjusting this class of accounts? A. Yes, sir; we have had this matter in hand for a year and a half.

Q. Have many of those accounts been mutually adjusted and agreed upon? A. Yes, sir; and settled.

Q. A good many of them have been paid, have they not—the bulk of them, probably? A. Only a very small proportion of them have been paid. The larger amounts in this class of accounts are so complicated in connection with matters growing out of the operation of the lines of the Central of Georgia, which, together with the difficulties that we have met with in getting information concerning such matters, has made it very slow work in reaching a conclusion; and, in fact, the larger accounts have not yet been finally adjusted, and probably will not be for several months.

Q. Does the bulk of that class of accounts grow out of the interchange accounts between the Central of Georgia system and other roads? A. A very considerable proportion of them do.

Q. As the balance of it consists of personal inter-

change accounts between the Richmond & Danville system proper and other lines, you may state to what extent that class of accounts are settled and out of the way. A. They are pretty well cleared up and out of the way, with the exception of possibly one or two very complicated accounts.

Q. So that the unadjusted accounts with other roads are for nearly the entire amount unpaid balances, and a legacy of the Central of Georgia operation; is it not? A. I think so.

Q. So far as you know, does the Richmond & Danville Railroad owe any claim for labor or operating supply account where the labor was performed or the materials were furnished and used on the Danville system within the six months prior to the appointment of receivers in June, 1892? A. I know of nothing except what we call the "Unpaid Wages Account," which is composed of missed men who have not called for their time.

Q. How is it as to there being any unpaid material or supply creditors within that six months? A. So far as I know, they are all settled. There are one or two accounts, I believe, in which there is some question as to whether or not a certain proportion of the accounts falls within the six months, but we have been unable to determine as yet as to the exact facts.

Q. Taking now the heading "R. & D." The footing under it amounts \$318,324.71. Please state what that amount of indebtedness represents and includes. A. It represents that proportion of claims that have been filed before the masters which was for material, labor, etc., purely for the Richmond & Danville Railroad, for roads, in its system, and accruing prior to the 17th of December, 1891.

Q. Of that gross amount, about how much money, in round numbers, does the claim of the Carnegie Steel Company, Limited, include? A. About \$125,067.39.

Q. And how much does the claim of the Pullman Palace Car Company include which is embraced in that? A. \$90,752.81.

Q. You may state how much in that amount embraces the claim of the Western Union Telegraph Company? A. \$22,186.53.

Q. In this statement and summary, which you have prepared, you may state whether there is included in any of the claims filed with the special masters anything on account of injuries to persons and property? A. There is a very large amount under the head of the "No Record" column. I mean by that there is no record of such claims in the accounts in the Danville office.

Q. You may state whether or not that class of claims is added until there has been an adjustment of the accounts and the amount is settled and placed in the voucher? A. The rule is to put no account upon the books of the company as an obligation until after it has been passed upon by the proper department officers for settlement.

Q. Be good enough to state whether it is or is not a fact that a very large amount of the footing of \$437,402.19, under the heading "No Record" in the summary, embraces claims of that class for injuries to persons and property? A. It does; a very large amount.

Q. Now take the footing of \$298,237.86, under the heading "C. R. R.", and what does that amount represent, and indicate, and embrace? A. It embraces everything that is on the books of the company charged to the lines of the Central Railroad of Georgia.

Q. For what? A. For operating those properties during the time that they were in the hands of the Richmond and Danville Railroad Company.

Q. You mean, do you not, indebtedness incurred by the Danville Company for labor and supplies that were used on the lines of the Central of Georgia System prior to March 4, 1892, when the receivers of that system were appointed? A. Yes, sir.

Q. Those accounts, then, are both younger than six months and older than six months? A. Yes, sir. They include everything that is unsettled. I would state in this connection that of the Central Railroad lines operated by the Richmond and Danville, the Port Royal and Western Carolina was not surrendered until the 16th of March, and the Port Royal and Augusta on the 19th of March. Of course, these accounts under the heading "C. R. R." include anything that may be upon the books growing out of the operation of these two lines up to the dates on which they were turned over, as above stated.

Q. Do the books, vouchers and records in the Richmond and Danville office show the destination and use of labor and material as between the R. & D. proper and the Central Railroad and Banking Company of Georgia System? A. Yes, sir.

Q. Under the heading "C. R. R." you mean to include the Central Railroad and Banking Company of Georgia System? A. Yes, sir.

Q. Please explain to the Masters the red ink figures that occasionally occur under that heading? A. Those figures represent the accounts shown by Exhibit "B," in

the report of Mr. Pleasants and myself as special masters, under the order of court of June 28, 1892, which was filed with our report to the court on July 17, 1893, asking for instructions relative thereto, being that portion of claims of the Richmond and Danville filed before the special masters, material for which was shipped direct to the general store-houses of the Richmond and Danville Railroad during the six months immediately prior to the appointment of receivers, but which was reshipped from said store-houses to the different points upon the line of the Central of Georgia, or its operated lines, and used for their account.

Q. About what is the total amount of those claims?

A. About \$20,000.00.

Q. Now, excepting that \$20,000.00, you may state whether or not the material represented by the total footing under the Central Railroad of Georgia column does or does not embrace material that was shipped by the vendors direct to the Central Railroad and Banking Company of Georgia? A. It does.

Q. And used on those lines, according to the books, reports and vouchers here? A. Yes, sir, with the exception of the accounts already excepted in regard to some coal used at Augusta, Georgia.

Q. The claims aggregate only a few thousand dollars, then? A. Yes, sir.

Q. I will ask you to state the different roads which were included in the Central of Georgia System, about which you have been testifying? A. The following is a list of the roads embraced in the accounts upon the books of the Richmond & Danville Railroad: Central Railroad, Savannah, Griffin & North Alabama Railroad, Chattanooga, Rome & Columbus Railroad, Eden & Americus Railroad, Savannah & Atlantic Railroad, Upson County Railroad, Southwestern Railroad, Montgomery & Eufaula Railroad, Eufaula & Clayton Railroad, Columbus & Western Railroad, Mobile & Girard Railroad, Buena Vista & Ellaville Railroad, Columbus & Rome Railroad, East Alabama Railroad, Augusta & Savannah Railroad, Port Royal & Augusta Railroad, Port Royal & Western Carolina Railroad.

Q. I will ask you from the accounts and books in your charge, and also from such records as there are in the office of the General Counsel of the receivers, whether you will prepare a statement of the judgments that have been rendered up to this time on account of injuries to persons and property, and now unpaid? A. Yes, sir; I will.

Q. Does this general statement of yours include any claims for taxes? A. No, sir.

Q. In going through the claims filed before the special masters, have any claims been found which have been filed for taxes due against the Richmond and Danville proper? A. I think there was one for some \$2,000.00.

Q. There was a large number of claims filed before the special masters, was there not? A. Yes, sir.

Q. And with the exception of the \$2,000.00 claim, they were claims for taxes that had been assessed against some part of the system of the Central Railroad and Banking Company of Georgia? A. I think so.

Q. None of these claims for taxes against the Central Railroad of Georgia have been paid by the receivers, have they? A. No, sir.

By Mr. N. P. BOND: Mr. Dunham, have you anything before the masters to show the amount of supply and labor claims filed against the Danville Road, not including the claims against the Central Railroad of Georgia, or those applicable to the Central of Georgia, which are left unpaid up to date? A. Yes, sir. Claims amounting to \$318,324.71 is the total amount that we find properly chargeable against the R. & D. lines proper. This includes some other items than labor and material. To illustrate: The account with the Western Union Telegraph Company, which amounts to \$22,186.53, is not wholly labor and supplies for operation, but largely for construction of telegraph line. Neither is that of the Pullman Palace Car Company, which amounts to some \$90,000, the larger proportion of this being for mileage of cars.

Q. Is there anything in there for wages due operatives of the road? A. No, sir.

Q. What is the total amount sworn to be unpaid by the accounts, aside from the claim of the Pullman Palace Car Company and of the Western Union Telegraph Company, in the R. & D. column? A. \$205,385.37.

By Mr. CRAWFORD: Now take out the Carnegie Company? A. The balance is \$80,317.98.

By Mr. BOND: Will you please state how the claims of the Pullman Palace Car Company and the Western Union Telegraph Company arose, and give, so far as you can, the items of those claims? A. The claim of the Pullman Palace Car Company arose largely under a contract with the Union Palace Car Company, which was after-

wards transferred to the Pullman Company. I herewith file a copy of that contract. The claim of the Western Union Telegraph Company arose under a contract, which I also produce and file. I will produce a copy of the claim in detail hereafter. (The contracts above referred to are herewith filed, marked "Carnegie Company, Exhibit "A.")

Q. Please look at the paper now shown you, purporting to be a statement of the results of the operations of the receivership from June 16th, 1892, to July 31st, 1893, which was the receivership under the case of Clyde and others against the Richmond and Danville, and also the statement of the results of operations from August 1st, 1893, to December 31st, 1893, which was the receivership under the bill filed by the Central Trust Company, and say whether you prepared those statements, and whether the same are correct? A. I did not prepare the copy from which the statements were printed, but I furnished the figures for the purpose. This statement, however, does not include, as you will note, the operations of the Georgia Pacific Railway.

(The claimant herewith files the paper above referred to, marked Carnegie Company's Exhibit "B.")

Q. Can you state whether it is correct or not? A. It is correct.

Q. It appears from that statement, does it not, that at the date of the appointment of the receivers under the bill of Clyde and others, there was cash received by them from the railroad to the amount of \$480,427.91? A. Yes, sir.

Q. And that they subsequently collected from earnings made prior to the receivership \$671,363.40? A. Yes, sir.

Q. It further appears, does it not, that the operations of the receivership from June 17th, 1892, to July 31, 1893, resulted in net earnings above operating expenses, including taxes, of \$3,297,792.31? A. Yes, sir.

Q. And over all expenses, including extraordinary expenses of operation, of \$2,738,057.69, but that, after making the expenditures for rentals, etc., the operations resulted in a deficit of \$592,289.30? A. Yes, sir.

Q. The total interest and rentals paid, which resulted in that deficit, is shown in Exhibit "A" of that statement, is it not? A. Yes, sir.

Q. And Exhibit "C" is intended to show the lines operated which earned less than the amounts paid out for

rentals and interest on those lines; am I correct? A. Yes, sir; those figures show the net results after all charges against each of the lines.

Q. It seems from the account on the first page of this exhibit that from June 17, 1892, to July 31, 1893, the net earnings were \$2,738,057.69, and that the receivers in paying rentals, etc., as shown by that account, paid out \$3,330,346 99, which is \$592,289.30 more than they got. Where did they get the money? A. The balance is made up from the difference between cash received from the Richmond & Danville June 16, 1892, collections on accounts that accrued prior to June 16, 1892, and materials and other balances taken up from R. & D. books, June 16, 1892, less disbursements on account of accounts prior to June 16, 1892, and cash, material, and accounts turned over to the new receivers. This statement to which you refer is not a cash statement. It is the result of operations, and shows the deficit in the operations of the property (excepting the Georgia Pacific Railway) for the period named.

Q. I understand you to mean that that deficit was provided for by using in some form the cash or collections for material received by the receivers at the time of their appointment? A. To a large extent by material. So far as this statement is concerned, the cash, also all assets and liabilities, would affect it.

Q. Your Exhibit "A" attached to the paper to which you are referring represents cash payments, does it not? A. Yes, sir.

Q. How were they provided for? A. From the general receipts of the receivers, as shown in the cash statement of receipts and disbursements on the pages following the statements under discussion (pages 3 and 4).

Q. At the date of the appointment of the receivers on June 16, 1892, were there not three mortgages of the Danville proper in default? A. I think not.

Q. Can you state on what dates the coupons of what is known as the consolidated five per cent. mortgage became due? A. On the first of April and October.

Q. What is the amount of interest? A. The interest upon the five per cent. consolidated bonds, not including those pledged for loans, is \$76,000.00 every six months.

Q. Will you state the amount paid on those on October, 1891, in the way of interest? A. The amount paid on the October, 1891, coupon was \$76,000.00.

Q. And the same amount, I presume, was paid on

April 1, 1892? A. The amount paid on the April, 1892, coupon was \$74,150.00.

Q. On what dates is the interest payable on the R. & D. debentures? A. The interest is payable on the same dates as that of the consolidated fives, April 1st and October 1st. The amount of each interest payment is \$100,986.00.

Q. Will you state the amount of interest paid on those bonds on October 1st, 1891, and April 1st, 1892? A. The amounts so paid on the October coupon was \$100,980 00

“ “ “ April “ “ \$96,360 00

Q. The first mortgage consolidated sixes fall due on January and July, do they not? A. They do.

Q. Was the interest paid on those in January, 1892? A. Yes, sir.

Q. What was the amount of that payment? A. The amount was \$179,310.00.

Q. Was the coupon on that mortgage due July 1st, 1892, paid? A. All that were presented were paid.

Q. Please give me the amount of that payment and the date when made? A. The coupon was not paid at its maturity, but was paid under an order of court on June 28th, 1892, and the amount was \$179,160.00.

Q. Were January and July, 1893, paid? If so, please give me the amount of such payments. A. These coupons were advertised to be paid on June 30, 1893, and December 28, 1893, and the payments amounted to \$174,780.00 and \$166,440.00, respectively.

Q. Will you please file copies of the lease to the Richmond and Danville Company of the Richmond, York River and Chesapeake R. R., dated on the 9th day of July, 1881; also, the lease from the Piedmont R. R. Co. to the Richmond and Danville R. R. Co., dated the 14th day of September, 1874; also, the lease of the North Carolina R. R. Co. to the Richmond and Danville R. R. Co., dated the 11th day of September, 1871; also, the lease of the Atlanta and Charlotte Air Line Railway Co. to the Richmond and Danville R. R. Co., dated the 26th day of March, 1881; also, the lease to the Richmond and Danville R. R. Co., made by the Virginia Midland Ry. Co. on the 15th day of April, 1886; also, the lease of the Western North Carolina R. R. Co. to the Richmond and Danville R. R. Co., dated May 1, 1886; also, the lease of the Charlotte, Columbia and Augusta R. R. Co. to the Richmond and Danville R. R. Co., dated May 1, 1886; also, the lease of the Columbia and Greenville R. R. Co. to the Richmond and

Danville R. R. Co., dated May 1, 1886, together with a statement of the interest, rentals and dividends paid under said leases during the year 1892, and since the appointment of the receivers, distinguishing as to how much was paid by the different receivers? A. Yes, sir, I will do so.

Q. Why is the amount expended in operating the Georgia Pacific railroad from June 17, 1892, to July 31, 1893, omitted from Exhibit "C" in your statement of operations heretofore filed? A. It was omitted at the request of Mr. Spencer.

Q. What is the amount of that? A. The deficit was \$279,351.57.

Q. That amount, I presume, is included in your cash statement of receipts and disbursements? A. So far as the cash transactions are concerned? Yes, sir.

Q. I notice in your statement of deficit the first item is Richmond and Danville Railroad Company and fixed leases. What does that include? A. That includes York River, Atlanta and Charlotte Air Line, the Milton and Sutherlin, the State University, and the North Carolina R. R.'s.

Can you give the amount of deficit in operating each of those? A. Yes, sir. They are as follows: R. & D. proper, gain \$346,163.10; North Carolina R. R., gain, \$116,474.88. Losses: A. & C. A. Line, \$543,202.93; R. Y. R. & C. R. R., \$118,691.71; M. & S., \$4,770.32; S. U., \$4,243.80.

Q. On what theory are those lines shown in this statement under one head? A. I really do not know. They were placed in that order by Mr. Spencer in arranging the information for publication. I presume, for the reason that what are known as the Richmond and Danville fixed leases in most of the financial statements that are published, are included as a part of the Richmond and Danville railroad, and stated as the Richmond and Danville railroad and fixed leases, and I suppose for that reason the information is so stated in this exhibit, though I do not know positively.

Q. What do you mean by fixed leases? A. The fixed leases are so called by reason of the fixed, stimulated sum which the Danville is bound to pay by the covenant in the lease.

Q. Do I understand that in what you have called operating leases here the Danville is not bound to pay the amounts unless earned? A. It is required under those

leases or agreements to pay certain fixed charges up to the extent of the net earnings of the property. Anything that they pay in excess of that is an open account against the lessor company.

Q. In other words, the deficit shown in your account under the head of operating leases are chargeable as debts against the company on whose account those amounts were paid? A. I will answer that question by filing copies of the leases and operating contracts, marked Exhibit "C."

By Mr. CRAWFORD: Mr. Dunham, the two cash items included in the cash statement of the receivers for the period between June 16, 1892, and July 31, 1893, the cash received at the commencement of the receivership, and from other earnings prior to June 16, 1892, amounted to \$1,151,791.31, did they not? A. Yes, sir.

Q. So that the cash received by the receivers is in consequence of earnings and collections on account of the business of the company before the receivership, is it? A. Yes, sir.

Q. Now, how much, during the same period, did the receivers pay out on account of traffic balance due to connecting lines, loss and damage claims, pay-rolls, material, supply and other vouchers, which accrued an account of the Richmond and Danville Railroad Company's operations prior to June 16, 1892? A. \$1,237,196.22.

Q. In addition to that, how much was paid out on the same account by the receivers intervening the period from August 1, 1893, to November 30, 1893? A. \$21,155.39.

Q. As against how much cash received from earnings anterior to June 16, received during the same period? A. \$9,369.66.

Q. That makes, does it not, in the aggregate, payments on that account of about \$96,000 in excess of all moneys received from the like source? A. The exact amount is \$97,190.64.

In addition to that amount, how much money did the receivers of the Richmond and Danville pay out on account of operating expenses, etc., in connection with the Georgia Pacific road, accruing prior to June 16, 1892? A. \$82,784.43; but this is included in the R. & D. cash account, and covered by the \$97,190.60, stated above.

Q. Prior to July 31, 1893? A. Yes, sir.

Q. How much after that time down to December 31, 1893? A. \$13,248.64.

Q. Now, considering for this statement, the Georgia Pacific as a part of the Danville System, state the gross amount of payments on account of the operation of the system, in excess of all moneys received on account of income and earnings prior to the receivership? A. \$110,439.28.

Q. So that is the amount paid out in excess of anything received? A. Yes, sir, in the way of cash.

Q. Is that exclusive of the fund derived from the sale of one million dollars of Receivers' Certificates? A. Yes, sir.

Q. You state that interest payments have been made on the mortgage bonds issued by the Richmond and Danville on its own lines. Have any payments been made since the receivership upon the accruing interest on the Richmond and Danville consolidated five per cent. mortgage? A. None, except a few coupons. They were taken up in the Fourth National Bank account immediately after the receivers were appointed.

Q. Were or were not those isolated coupons that had matured before the receivership that had not been presented for payment? A. Yes, sir.

Q. Outside of those isolated payments, was not the entire interest which has matured on that incumbrance defaulted upon during the whole receiverships? A. It was.

Q. How is it with regard to the interest maturing on the debentures issued by the Richmond and Danville? A. The same answer applies exactly.

Q. On the oldest first mortgage, the sixes, issued by the Richmond and Danville, as I understand you, interest has been paid, with the exception of the coupon maturing January 1, 1894? A. Yes, sir.

Q. That is still unpaid, is it? A. It is.

Q. Have the receivers paid any part of the principal of the \$1,000,000.00 of Receivers' Certificates? A. They have not.

Q. Were these interest payments on the first mortgage Richmond and Danville sixes made by the receivers ordered by the court? A. My recollection is that they were.

Q. Were or were not the payments made of interest, rentals and dividends in Exhibit "A" paid out by the receivers under orders of court directing such payments to be made? A. They were paid either under the original order of June 28, 1892, or under special orders.

By Mr. BOND: Mr. Dunham, in the question in regard

to the Georgia Pacific, you referred to a paper marked "Result of Operations of the Georgia Pacific Railway." That was made in your department, was it not? A. The figures were furnished by me, but the statement, as made, was prepared in New York.

Q. It is, however, a correct statement? A. It is.

Claimant files a copy of the statement, marked "Carnegie Company's Exhibit 'D.'"

ALANSON S. DUNHAM.

Further examination of Mr. A. S. DUNHAM, by Mr. N. P. Bond, before Messrs. Pleasants and Atkins, on March 23rd, 1894, in Washington, D. C.

By Mr. BOND: I notice from the petition of Messrs. Moore & Schley, filed in this case on the 24th of June, 1893, praying for the issue of certain certificates, known as emergency loan certificates, that it is therein stated that the petitioners and others had advanced to the Richmond & Danville Railroad Company \$567,000. Does that amount appear on the books of the company? A. It does.

Q. Into what fund of the company was that amount paid? A. It was paid into the New York office and taken up by them in their cash account at that point.

Q. Did it or did it not go into the general cash account of the company, or was it set apart as a special fund for certain purposes, so far as appears from the books of the company? A. It went into the general cash account kept at the New York office; at least there is nothing in the account to show to the contrary.

Q. Is there anything on the books of the company to show what was done with that fund of \$567,000, and if so, what do the books show? A. In answer to that, I append hereto a copy of the New York office report of receipts and disbursements for the months of March and April, 1892, the months in which the so-called emergency loan certificates were taken up.

Q. It is alleged in the petition of Moore & Schley that the fund of \$567,000 was used to pay and discharge operating debts due for labor and supplies, and balances due connecting roads. If said sum was so used, were the claims paid therewith in any way assigned to the contributors to the fund, or were such debts of the company simply

paid in full, as other similar claims not paid out of that fund were paid? A. They were treated, so far as I can see, the same as any claim paid by the company, irrespective of the source the money came from. No distinction was made in the payment of an account by indicating from what source the money came to pay it. No assignment of any claims that may have been paid from these moneys was made to anyone.

ALANSON S. DUNHAM.

COPY N. Y. OFFICE CASH ACCOUNT MARCH AND APRIL.
1892.

(See page , testimony of A. S. Dunham.)

RICHMOND AND DANVILLE RAILROAD COMPANY, SAMUEL
SPENCER, F. W. HUIDEKOPER AND REUBEN
FOSTER, RECEIVERS.

TREASURER TO SUNDRIES.

For cash received at New York Office, during March papers filed with Treas. Disb't March 31.		\$1,378,996 11
42 To Bills Payable,		1,074,169 12
Carnegie Bros. & Co. loaned Feb. 29, '92, 60 days. In renewal		\$ 40,840 00
Central Trust Co., loan demanded,		60,000 00
Carnegie Bros. & Co., " 3 mos.,		33,174 99
Nat'l Bank of Rep., " 4 "		100,000 00
Moore & Schley, " demanded,		100,000 00
Carnegie Bros. & Co. " 3 mos.,		38,251 77
Central Trust Co., " demanded,		40,000 00
Myers, Rutherford & Co., " "		15,000 00
Carnegie Bros. & Co., " 3 mos.,		35,499 38
Work, Strong & Co., " demanded,		50,000 00
Myers, R. & Co., " "		15,000 00
Pull. P. Car Co. " 30 days,		48,402 98
31 This Co. gave its note 60 days favor R. & W. Pt. Ry. & Wh. T. Co., dated Mch. 30, '92, for 1,000,000 @ 6 per cent. as security for loan by syndicate to R. & W. Pt. T. Ry. Co. for this Co., said loan being made under agreement, dated Mch. 29, '92, between Central Trust Co., R. Term'l Co. and this Co. The following am't of said loan has been received,	498,000 00	
40 To Bills Receivable,		175,000 00
R. & W. Pt. T. Ry. & Wh. Co., loan Jan. 30, '92,	150,000 00	
" " Mch. 10, '92.	25,000 00	
78 To Georgia Pac. Ry. Co.,		34,442 50
Sold through Myers, R. & Co. \$46,000 Gap. Eq. M'tge. 5 per cent. Bonds @ 75 per cent. less Com.		
21 To Int. on Investments,		9,650 00
Collected Coupon No. 6 from \$386,000. Term'l Co. 5 per cent. Collat. Trust Bond.		
26 To Security Acct.,		60,363 75
A. B. A. 2 per cent. sold 2,000 Winston Town- ship @ 95 per cent.,	1 000 00	
Of which am't pd. acc't Att'y fees and cs. Yad- kin R. R.,	1,500 00	
	40,000 00	
Sold through Myers, R. & Co. 77,000 R. & D. 5 per cent. Eq. M'tge Bonds @ 78 per cent.,	59,963 75	
To Int. and Discount,		879 16
For amounts paid by Term'l Co. on loans.		
To Insurance,		24,491 58
The Lancaster Fire Ins. Co. of Manchester retd. premium of Fire Ins. issued by Montreal Fire Ins. Co. Policy 35,899.		

Cash Account (CONTINUED).**SUNDRIES TO TREASURER.**

For disbursements at N. York No. 2 acc't,
Month of March, 1892.

\$1,872,493 46

Bills Receivable,		\$165,000 00
1. Loaned R. & W. Pt. T. Ry. & Wh. Co. on	demand,	40 000 00
4. " "	"	50,000 00
8. " "	"	50,000 00
10. " "	"	25,000 00
Bills Payable,		805,502 56
Paid notes, &c., as follows:		
" Va. & Ala. Coal Co.,	Dec. 29,	3,092 82
"	"	7,260 84
Jane King,	Jan. 18,	1,365 43
Riverside Mills,	Dec. 29,	2,405 21
O. N. Gerse,	" 2,	1,298 81
Beecher & Benedict,	Oct. 29,	60,621 87
P. C. Rolli & Co.,	" 30,	615 00
Vulcan Iron Co.,	Dec. 31,	3,033 26
Work, Strong & Co.,	Feb. 28,	100,000 00
Carnegie Bros. & Co.,	Dec. 1,	33,174 99
Pull. Pal. Car Co.,	Nov. 1,	26,860 97
Cumberland Ct. M. Co.,	Jan. 1,	3,109 11
Inman, S. & Co.,	Feb. 19,	50,000 00
Coroud Coal & C. Co.,	Jan. 6,	3,037 10
Wm. Mann & Co.,	"	1,836 25
Watson & Abbott,	" 7,	1,089 05
G. Taylor & Co.,	" "	606 16
"	Dec. 8,	1,195 29
C. H. Boog & Co.,	Jan. 8,	1,135 87
Tidewater Oil Co.,	Dec. 9,	4,187 88
Elliott & Elliott,	"	3,061 46
So. Iron Car Line,	"	2,587 53
Riverside Mills,	Jan. 8,	3,395 20
J. T. Miller,	"	3,554 97
Henshaw & Medlan,	" 7,	1,497 98
Vulcan Iron Co.,	" 12,	930 53
Baughman Sta. Co.,	"	3,132 35
J. H. Burkhalter,	" 12,	2,600 53
G. Taylor & Co.,	"	576 28
Central Trust Co.,	Mch. 3,	60,000 00
Penna. Steel Co.,	Dec. 17,	2,533 39
Russell & E. M'fg Co.,	Jan. 15,	2,846 00
Tidewater Oil Co.,	"	4,535 65
Oglesby & Meader G. Co.,	"	3,441 48
B. D. Hasell & Co.,	"	819 92
Moore & Schley,	Mch. 18,	100,000 00
Carnegie Bros. & Co.,	Dec. 18,	38,251 77
Waldren's Ridge C. Co.,	Jan. 16,	1,015 52
"	"	1,295 25
Daisy Coal Co.,	"	1,145 70
"	"	1,117 85
"	"	1 235 30
E. G. Greely & Co.,	" 18,	1,157 98
Wright & Scandrett,	"	13,181 21
Phosper B. G. Co.,	"	1,672 09
G. I. & Steel Co.,	Feb. 16,	3,766 70
Grant Wilkins,	Dec. 19,	4,064 04
Cumberland C. & M. Co.,	Feb. 18,	2,241 96
Ches. & Ohio R'y	"	19,495 63
Pocahontas Coal Co.,	"	14,288 18
Carnegie Bros. & Co.,	Dec. 21,	35,499 38
Wright & Scandrett,	Feb. 20,	12,154 37

Cash Account (CONTINUED).

SUNDRIES TO TREASURER.

Bgham Lumber Co.,	Jan. 21,	1,371 62	
Mauldin & Son,	" 22,	750 00	
" "	" "	1,488 10	
R. E. Causey, Cash,	" "	1,155 66	
R. R. Sig. L. & L. Co.,	" "	1,324 39	
Myers, R. & Co.,	Mch. "	15,000 00	
Carnegie Bros. & Co.,	Nov. 25,	15,000 24	
Nat'l S. & Metal Co.,	Jan. 25,	800 82	
Hastings & Co.,	" "	1,041 17	
Hodges & Beres,	" "	1,618 63	
Carnegie, Phipp & Co.,	Dec. 24,	3,052 39	
J. B. English & Co.,	Jan. 23,	1,062 45	
B. Peterson,	" "	2,332 17	
J. E. Deaton,	Feb. 24,	621 56	
Althea Coal Co.,	" 23,	1,311 86	
R. & W. Pt. T. R'y & Wh. Co.,	Nov. 1,	21,000 00	
Pull. Pal. Car Co.,	Mch. 22,	48,402 98	
J. R. Zimmerman,	Feb. 25,	708 03	
R. S. Solar & Co.,	" "	773 30	
Pencoyd B. & C. Co.,	Jan. 27,	747 90	
O. N. Geise,	" "	1,205 81	
Bgham M. & T. Co.,	" "	2,004 86	
G. Taylor & Co.,	" "	1,033 54	
Dayton M'fg Co.,	" "	1,668 02	
Gutta P. R. M'fg Co.,	" "	3,156 25	
Ross Merban B. & F. Co.,	" "	1,353 11	
Riverside Mills,	Dec. 20,	2,405 21	
F. H. Lovell & Co.,	Jan. 28,	2,074 45	
Weir Troy Co.,	" "	5,959 16	
J. B. English & Co.,	" "	647 62	
R. H. Darby,	" "	1,453 00	
Star Headlight Co.,	" "	1,287 00	
O. D. I. & N. Works,	" "	5,870 15	
Coupon Agencies,			\$ 365,000 00
4th Nat'l Bank, Mch. 1,		15,000 00	
3,	15,000,		
12,	5,000,		
31,	300,000,	320,000 00	
10,	10,000,		
18,	10,000,		
9,	10,000,	30,000 00	
Cent. R. R. of Ga. Coupon & R.,			354,883 50
Deposited with N. Y. S. & T. Co.,		150,000 00	
Paid draft T. M. Cunningham to pay div. on stock,		153,436 50	
Paid Term'l Int. on div. on C. R. R. stock owned by former Co. Jan. 1st to date,		1,447 00	
Deposited with N. Y. S. & T. Co.,		50,000 00	
Interest and Discount,			6,745 16
To sundry amounts paid for Int. on loans, statements filed,			
Inds. & Co's (surpense) Incid. G. O. R. & D. 351.15, all R. [8],		525 58	876 73
Paid D. Taylor for printing and binding annual report all roads,		525 58	
Paid I. & S. W. cost of exchange in London adv't and court, &c., on Eq. Bonds,		351 15	
S. F. R. & D. 5 per cent. Eq. Bonds,			60,455 00
Pd. C. T. Co. on this acc't am't Int. for year ending Mch. 1, '92.			

Cash Account (CONTINUED).

SUNDRIES TO TREASURER.

R. Y. R. & C. R. R. Co.,	\$	777 00
Pd. dividend 3 per cent. W. P. Clyde, due July 1, '91,	\$	147 00
Pd. dividend 3 per cent. J. Harriman, due Jan. 1, '91,		630 00
Security Acct.,		6,371 00
Pd. Clark Co. bonds and coupons.		
Accts. Payable,		7,270 41
Vouchers Feb'y, 1500-10-11, 2115, April, 155-6-7-8-9, paid.		
C. C. & A. R. R. Co.,		18 00
Pd. dividend due on 3 sh. stock ; these 3 shs. of stock having been recently issued in exchange for same amount Cha. & So. Car. R. R. 8 per cent. dividend, though not included in original div. entry.		
A. & C. Air Line Co.,		40,000 00
Dep'd with C. T. Co. to pay Int. due April 1, '92, on Income & Pf. Bonds.		
Va. Mid. R'y Co.,		11,147 16
Pd. dft. J. S. Barbour, Rec., from J. W. Daniel, Att'y for Mr. Russell, in settlement of decree, Alex. Va., Circuit Court, Mch., '92,	9,598 49	
Pd. dft. J. S. Barbour, Rec., from Go. Mussback in settlement of decree, Alex. Va., Circuit Court, Mch., '92,	1,548 67	
Int. Eq. S. F. 5 per cent. Gold M. Bonds,		16,175 00
I. & S. W. paid in Europe 647 R. & D. 5 per cent. Eq. M. Bonds due Mch. 1, '92, @ 25.		
Central Trust Co.,		20,175 00
Deposited acc't R. & D. Eq. Trust Mtge., Sept. 3, '89.		
Ga. Pacific R'y Co.,		12,096 94
Deposited with C. T. Co., acc't G. P. Eq. Trust, July 17, '89,	6,096 94	
Dep'd to pay Int. due April 1, '92, on G. P. Eq. Trust Cfts., July 17, '86,	6,000 00	

Cash Account (CONTINUED).

TREASURER TO SUNDRIES.

For cash received at New York office, during April papers filed with treasurer. Disb't for April 30.	\$ 391,314 72
To Bills Payable,	367,786 16
Inman, S. & Co., loan 60 days @ 6 per cent.,	\$200,000 00
Rec'd on acc't, " by Syndicate, see Mch.,	30,000 00
" " " " " "	25,000 00
Carnegie Bros. & Co. " 3 mos. renewal,	12,786 16
Union Trust Co., " demanded,	85,000 00
Rec'd on acc't, " by Syndicate,	15,000 00
To W. N. C. R. R. Co.,	300 00
Received \$500 Cherokee Co. bonds in payment for mules sold on completion of W. N. C. R. R. to Murphy. This bond sold by A. B. A. 2 per cent.	
To Danville & Western R. R. Co.,	5,000 00
Received from A. B. A. Pres't on acc't Int. due on 1st Mtge. Bonds of that Co., April 1, '92.	
To Int. on Investments,	7,500 00
Int. due April 1st on 250,000 B. C. & R. S. B. Co. Cfs. on Indebts.	
To Central R. R. Co.,	7,380 51
Received from Mutual Fire Ins. Co. in payment of losses sustained on cotton at Rome, Pol. 35809,	171 80
Cotton at Clayton, Pol. 35809,	1,295 15
Received from Lancaster Fire Ins. Co., of Man- chester, bal. of prem. on Fire Insurance Policy cancelled, see Mch.,	913 56
Georgia R. R. lease to correct error of Nov. '91 (see Barham),	5,000 00
To M. C. Frt. Cars R. & D.,	3,212 80
" " " " " G. P.,	131 25
For sundry amounts of Ins. received from cars burned, see papers on file.	

Cash Account (CONTINUED).**SUNDRIES TO TREASURER.**

For disbursements made by New York office during the month of April papers filed with treasurer. Disb't for April 30, '92,

\$ 786,535 55

Dividend R. & D.,

921 00

J. D. Hurlsey,

\$ 94 00

W. P. Stunhall,

752 00

Est. W. B. Purcell,

35 00

July, '88,-10,

July, '89,-10,

Thos. J. Owens, " '89,-10,

" '90,-10,

40 00

Interests and Discounts,

35,710 87

Sundry amounts of Int. paid, see file.

Coupon Agencies,

225,000 00

5. 4th Nat'l Bank,

25,000 00

6. 10,000, 7-15,000, 9-10,000, 12-5,000,

40,000 00

14. 5,000, 20-5,000, 30-140,000,

150,000 00

8. National Mch. B'k Balt.,

10,000 00

G. E. Incidentals R. & D.,

165 39

" " N. C.,

100 00

" " V. M.,

100 00

" " A. & C.,

100 00

" " W. N. C.,

100 00

" " C. C. & A.,

100 00

" " C. & G.,

100 00

" " G. P.,

100 00

Amount paid 4th Nat'l Bank Common or for paying coupons of this system,

Accounts Payable,

4,451 51

March, 633,

100,000 00

" 634,

50,000 00

" 1939,

3,000 00

April, 2403,

61,000 00

" 2404,

231,451 00

Bills Payable,

16,500 00

Loaned R. & W. Pt. T. R'y & Wh. Co. on their demand note 6,000 on 18-10,500.

Va. Mid. R'y Co.,

13,708 45

Deft. John S. Barbour, Rec., dated Mch. 24, favor J. W. Daniel, Att'y for Melenda & Bus-sell,

9,598 49

And favor " " " G. A. Musback in settlement decree, Alex. Circuit Court.

Mch. Term, '92,

1,548 66

Int. on above 33 days @ 6 per cent.,

61 35

Cash payment in settlement of suit of S. L. Stockbridge settled for \$22,500, remaining payment being \$10,000 June 15, and \$10,000 Aug. 1, '92,

2,500 00

Central Trust Co.,

16,000 00

Deposited with Central Trust Co. acc't R. & D. Eq. Mtge., Sept. 3, '89.

Georgia Pac. R'y Co.,

976 76

Deposited with C. T. Co. acc't G. P. Eq. Trust, July 17, '89.

Cash Account (CONTINUED).

SUNDRIES TO TREASURER.

Bills Payable,

\$ 457,398 57

	July 1,	100,000,	
Fourth Nat. Bank, loan	3,	100,000,	\$200,000 00
Carnegie Bros. & Co., " Note,	Dec. 30,		12,786 16
J. T. Millen	Mch. 1,		3,370 62
D. Rawl & Son,	"		820 11
J. H. Hertz,	"		1,677 00
Standard Oil Co.,	Dec. 31,		7,452 21
4th Nat. Bank, loan Bal. of 100,000,	Feb. 5, '91,		92,000 00
Coroud Coal & C. Co.,	Jan. 6,		3,037 10
Howard Harrison I. Co.,	Feb. 5,		1,501 22
Revere Rubber Co.,	" 6,		1,331 17
Riverside Mills,	Jan. 8,		3,395 20
J. L. Hill Ptg. Co.,	Feb. 8,		3,211 32
Perkins & Bro.,	"		1,604 84
T. W. Morris & Co.,	" 6,		2,625 79
Peng. Mason Shoe Co.,	"		1,933 83
Elliot & E.,	"		2,092 27
Kingan & Co.,	" 8,		2,427 23
J. L. Bailey & Son,	" 9,		2,344 12
Patterson, Seigent & Co.,	"		1,970 67
O. N. Geise,	"		1,179 00
Merchant & Co.,	"		3,892 64
O. Ames & Son, Corp.,	"		2,087 98
Midvale Steel Co.,	" 10,		1,244 38
Standard Oil Co.,	"		1,836 50
N. Hess & Co.,	"		1,802 27
Baughman Sta. Co.,	Jan. 11,		4,846 44
Black Diamond Coal Co.,	Feb. 10,		1,944 10
Walden Ridge Coal Co.,	" "		1,000 00
" " "	" "		1,000 00
" " "	" "		830 08
McDonough & Ballantyne,	" "		3,543 21
E. W. Blatchford & Co.,	June 11,		3,350 86
McConway Forley Co.,	Feb. 11,		6,112 84
Gilbert Taylor & Co.,	" 12,		1,180 82
Latrobe Steel W'ks,	Jan. 15,		1,639 60
Tidewater Oil Co.,	" "		4,535 65
Andrews & Baptist,	Feb. 16,		1,835 33
Murphy Varnish Co.,	"		1,960 63
E. W. Blatchford & Co.,	Jan. 18,		2,555 86
V. Hechler, Jr. & Bro.,	" "		1,817 42
Gilbert Taylor & Co.,	Feb. 17,		501 18
Carnegie, Phipps & Co.,	" "		1,538 36
Ches. & Ohio,	Mch. 19,		13,101 73
Pocahontas Coal Co.,	Feb. 18,		12,386 56
Coal Creek Coal Co.,	" 19,		3,891 07
Oliver, Arne & Co.,	"		1,129 96
Wright & Scandrett,	" 20,		1,385 39
R. R. Sig. L. & L. Co.,	Jan. 22,		1,324 39
Wright & Scandrett,	Feb. 20,		6,065 12
Wallace & Son,	" 24,		793 58
J. E. Deaton,	" "		621 56
So. Supply Co.,	" "		1,480 47
Luken Iron & S. Co.,	" "		831 38
Hankin & Bridges,	" "		3,468 54
Walden Ridge C. Co.,	" 25,		1,179 48
Tenn. Coal & M. Co.,	" "		937 59
Walden Ridge Coal Co.,	" "		1,000 00
Kingan & Co.,	" "		841 15
E. A. Kinsey & Co.,	" "		612 54

Cash Account (CONTINUED).

SUNDRIES TO TREASURER.

Penn. R'y T. & P. Co.,	Feb. 25,	460 50
Acme R'y Sig. M'fg Co.,	" "	458 17
Fairbank & Co.,	" "	1,256 27
Blackmer & Post,	Jan. 27,	3,110 77
Gutta P. & Rubber Co.,	" "	3,156 25

Central R. R. Co.,

15,000 00

Georgia R. R. lease to correct error in crediting
this am't Oct. 30, '91.

**CIRCUIT COURT OF THE UNITED STATES, EASTERN
DISTRICT OF VIRGINIA.**

Central Trust Company of New York	} In Equity, Consolidated Cause.
<i>vs.</i>	
Richmond and Danville Railroad Company.	
Wm. P. Clyde and others	
<i>vs.</i>	
Richmond & Danville Railroad Company and others.	

Examination of Mr. A. S. DUNHAM before Messrs.
Pleasants and Atkins, special masters, on March 22nd,
1894, in Washington, D. C.

Present: Mr. Henry Crawford, for the complainants; Mr.
N. P. Bond, for the Carnegie Steel Co., Limited; Mr.
Hugh L. Bond, Jr., for the receivers.

By Mr. CRAWFORD: Mr. Dunham, who collected the
income earned by the operations of the Central of Georgia
system prior to March 4, 1892, when the receiver was ap-
pointed, but collected thereafter? Did the Richmond &
Danville collect it, or did the receivers of the Richmond
& Danville do so? A. The Richmond & Danville collected
some of it.

Q. About how much? A. Comparatively a small
amount.

Q. They were accounts between connecting roads that
brought in both the operation of the R. & D. system pro-
per and the Central of Georgia while it was being operated
by the Danville? A. Yes, sir.

Q. Do the books of the Danville office in your charge
furnish detail so that you would be able to make a state-
ment of the income and earnings of the Central of Georgia
that were uncollected at the time of the appointment of
receivers of that system on March 4, 1892? A. Yes, sir.

Q. I will ask you to append to your deposition a statement showing the amount of uncollected income at that time, and also showing how much of that income has been since collected either by the Danville Road or by the receivers? A. I will append it.

Q. You know as a matter of fact, do you not, that the receivers of the Central Railroad have, since March 4, 1892, collected to a very large amount income which was earned while the road was being operated by the Danville? A. Yes, sir.

Q. Any statement furnished you by the receivers of the Central Railroad as to the amount of income collected by them in money, where that income was earned prior to their appointment, I will ask you to append. A. I will do so.

Q. Is it also true that the receivers of the Danville Road have been compelled, through attachments and otherwise, to pay large sums of money in consequence of the operations of the Central of Georgia? A. Yes, sir.

Q. For materials furnished them? A. Yes, sir.

Q. Will you also include in the statement previously asked for a statement of the amount so paid.

A. S. DUNHAM.

STATEMENT OF A. S. DUNHAM

To be Attached to His Evidence Taken Before the Masters,
March 22. 1894.

In answer to the question as to the uncollected income and earnings growing out of the operations of the Central Railroad of Georgia by the Danville Company that were uncollected at the time of the appointment of the receivers of the Central Railroad of Georgia, March 4th, 1892, I would state that there was no separation of the accounts as between the Central Railroad and the Danville until March 31st, 1892, at which time, as near as I can estimate, such uncollected revenue and income amounted to \$1,043,892 22

In answer to further questions as to income collected of different parties, etc., I would say the amount reported by the Central Railroad Bank as having been uncollected from agents and others, after March 5th, 1892, is \$ 376,628 06

It is impossible to determine what proportion of the above amount is applicable to business prior to March 5th, 1892, or between March 5th and 31st.

Amount collected from agents and other by John W. Hall, treasurer for receivers of Central Railroad, after March 5th, 1892, was

\$ 114,309 81

It is impossible to determine what proportion of the above amount is applicable to business prior to March 5th, 1892, or between March 5th and 31st.

This is less disbursements made by him during the same period.

Amount standing to the credit of John W.

Hall, treasurer for Richmond and Danville Railroad, in Central Railroad Bank at Savannah, Ga., March 4th, which has been withheld by the Central Railroad Bank is

\$ 35,481 34

Amount collected by the Richmond and Danville Railroad between March 5th, 1892, and June 16th, 1892,

\$ 63,835 89

Amount collected by Huidekoper & Foster, receivers,

\$ 12,033 29

Amount disbursed by Huidekoper & Foster, receivers,

\$ 23,228 45

Amount collected by Spencer, Huidekoper & Foster, receivers,

\$ 561 93

Amount disbursed by Spencer, Huidekoper & Foster, receivers,

\$ 20,215 48

Alanson S. Dunham's Answer to the last Question of N. P. Bond, Esq., on page eleven of said Dunham's testimony, his Answer to said Question appearing on page twelve of said testimony.

INTEREST AND RENTALS PAID FROM JANUARY 1ST, 1892, TO JUNE 16TH, 1892.

Virginia Midland,	\$469,665 50
Richmond, York River & Chesapeake,	61,002 00
Western North Carolina,	76,500 00
Charlotte, Columbia & Augusta,	153,148 75
Columbia & Greenville,	139,270 00
Oxford & Clarksville,	93,000 00
Piedmont,	30,000 00

INTEREST AND RENTALS PAID FROM JUNE 17, 1892, TO JULY 31, 1893.

VIRGINIA MIDLAND.

General Mortgage,	May, 1892,	\$ 1,675 00	\$
"	Nov. "	120,200 00	
"	May 1893,	119,200 00	241,075 00
Serial Mortgage A.	Mch. 1891,	15 00	
"	Sep. "	30 00	
"	Mch. 1892,	666 00	
"	Sep. "	17,985 00	
"	Mch. 1893,	17,850 00	36,546 00
Serial Mortgage B.	Sep. 1888,	3 00	
"	Mch. 1890,	21 00	
"	Sep. "	24 00	
"	Mch. 1891,	726 00	
"	Sep. "	762 00	
"	Mch. 1892,	2,031 00	
"	Sep. "	56,679 00	
"	Mch. 1893,	56,370 00	116,616 00
Serial Mortgage C.	Sep. 1890,	6 00	
"	Mch. 1891,	594 00	
"	Sep. "	654 00	
"	Mch. 1892,	1,320 00	
"	Sep. "	32,994 00	
"	Mch. 1893,	32,685 00	68,253 00
Serial Mortgage D.	Sep. 1889,	4 50	
"	Mch. 1890,	4 50	
"	Sep. "	4 50	
"	Mch. 1891,	4 50	
"	Sep. "	10 00	
"	Mch. 1892,	604 00	
"	Sep. "	18,992 00	
"	Mch. 1893,	18,930 00	38,554 00
Serial Mortgage E.	Sep. 1890,	12 50	
"	Mch. 1891,	60 00	
"	Sep. 1891,	200 00	
"	Mch. 1892,	2,167 50	
"	Sep. "	44,202 50	
"	Mch. 1893,	43,212 50	89,855 00
Serial Mortgage F.	Sep. 1892,	32,750 00	
"	Mch. 1893,	32,750 00	65,500 00

FRANKLIN & PITTS. R. R.

First Mortgage, Prior,		2,043 52	
"	July 1892,	3,500 00	
"	Jan. 1893,	3,500 00	
"	July "	2,430 00	11,473 52

CHARLOTTESVILLE & RAPIDAN R. R.

Rental,	July 1892,	17 625 00	
"	Jan. 1893,	17,650 00	
"	July "	17,650 00	52,925 00

Amount forward \$ 720,797 52

Interest and Rentals (CONTINUED).

RICH., YORK RIVER & CHESA. R. R.

		Amount forward	\$ 720,797 52
First Mortgage,	Jan. 1892,	\$ 40 00	
"	July "	16,000 00	
"	Jan. 1893,	15,960 00	
"	July "	15,760 00	47,760 00
Second Mortgage,	May 1892,	30 00	
"	Nov. "	14,340 00	
"	May 1893,	14,340 00	28,710 00
Dividend,	July 1892,	14,703 00	
"	Jan. 1893,	14,619 00	
"	July "	14,496 00	43,818 00

WESTERN NORTH CAROLINA R. R.

First Consol.,	Jan. 1892,	120 00	
"	July "	74,850 00	
"	Jan. 1893,	75,360 00	
"	July "	72,090 00	222,420 00

CHARLOTTE, COLUMBIA & AUGUSTA R. R.

First Mortgage,	July 1889,	52 50	
"	Jan. 1890,	87 50	
"	July "	52 50	
"	Jan. 1891,	52 50	
"	July "	70 00	
"	Jan. 1892,	1,032 50	
"	July "	60,895 00	
"	Jan. 1893,	60,807 50	
"	July "	67,480 00	208,530 00
Second Mortgage,	Oct. 1891,	35 00	
"	Apr. 1892,	805 00	
"	Oct. "	17,290 00	
"	Apr. 1893,	16,905 00	35,035 00
1st Consol. Mtge.,	July 1891,	90 00	
"	Jan. 1892,	60 00	
"	July "	14,970 00	
"	Jan. 1893	15,000 00	30,120 00

ATLANTIC, TENN. & OHIO R. R.

Rental,	Oct. 1892,	12,500 00	
"	Apr. 1893,	12,500 00	25,000 00

CHERAW & CHESTER R. R.

First Mortgage,	Jan. 1892,	175 00	
"	July "	3,080 00	
Dividend,	Oct. "	3,344 25	6,599 25

CHESTER & LENOIR R. R.

First Mortgage,	July 1892,	5,845 00	
Dividend,	Apr. "	2,613 75	8,458 75

Amount forward \$1,377,248 52

Interest and Rentals (CONTINUED).

COLUMBIA & GREENVILLE R. R.

		Amount forward	\$1,377,248 52
First Mortgage,	Jan. 1892,	240 00	
"	July "	59,970 00	
"	Jan. 1893,	59,940 00	120,150 00
Interest on Defaulted Coupons,		278 10	278 10
Second Mortgage,	Apr. 1892,	150 00	
"	Oct. "	29,640 00	29,790 00

SPARTANBURG, UNION & COLUMBIA R. R.

Rental,	July 1892,	25,000 00	
"	Jan. 1893,	25,000 00	50,000 00

ATLANTA & CHARLOTTE A. LINE R. R.

Organization Expenses prior,		1,000 00	
"	"		
"	Oct. 1892,	2,000 00	
"	Apr. 1893,	2,000 00	5,000 00
1st Preferred and Income,	Oct. 1892,	40,000 00	
"	Apr. 1893,	40,000 00	80,000 00
First Mortgage,	July 1892,	148,750 00	
"	Jan. 1893,	148,750 00	
"	July "	148,750 00	446,250 00
Dividend,	Sep. 1892,	51,000 00	
"	Mch. 1893,	51,000 00	102,000 00
	Total		\$2,210,716 62

INTEREST AND RENTALS PAID FROM AUGUST 1st, 1893, TO JANUARY 31st, 1894.

VIRGINIA MIDLAND R. R.

General Mortgage,	May 1890,	\$ 75 00	\$
"	Nov. "	75 00	
"	May 1891,	500 00	
"	Nov. "	500 00	
"	May 1892,	500 00	
"	Nov. "	500 00	
"	May 1893,	1,500 00	
"	Nov. "	119,150 00	122,800 00
Serial Mortgage A.	Mch. 1893,	162 00	
"	Sep. "	17,739 00	17,901 00
Serial Mortgage B.	Mch. 1892,	114 00	
"	Sep. "	168 00	
"	Mch. 1893,	534 00	
"	Sep. "	56,427 00	57,243 00
Serial Mortgage C.	Mch. 1892,	3 00	
"	Sep. "	6 00	
"	Mch. 1893,	315 00	
"	Sep. "	32,541 00	32,865 00
Serial Mortgage D.	Sep. 1891,	8 00	
"	Mch. 1892,	8 00	
"	Sep. "	8 00	
"	Mch. 1893,	31 50	
"	Sep. "	18,904 00	18,959 50
Serial Mortgage E.	Mch. 1891,	2 50	
"	Sep. "	2 50	
"	Mch. 1892,	2 50	
"	Sep. "	15 00	
"	Mch. 1893,	942 50	
"	Sep. "	43,602 50	44,567 50
Serial Mortgage F.	Sep. 1893,	32,750 00	32,750 00

FRANKLIN & PITTS. R. R.

First Mortgage,	July 1893,	1,070 00	
"	Jan. 1894,	3,500 00	4,570 00

CHARLOTTESVILLE & RAP. R. R.

Rental,	Jan. 1894,	17,650 00	17,650 00
---------	------------	-----------	-----------

RICH., YORK RIV. & CHESA. R. R.

First Mortgage,	Jan. 1893,	40 00	
"	July "	160 00	
"	Jan. 1894,	15,640 00	15,840 00

Dividend,	Jan. 1893,	54 00	
"	July "	177 00	231 00

Amount forward \$ 365,377 00

Interest and Rentals (CONTINUED).

WESTERN NORTH CAROLINA R. R.

		Amount forward	\$ 365,377 00
First Consol.,	Jan. 1892,	\$ 300 00	
"	July "	480 00	
"	Jan. 1893,	360 00	
"	July "	2,640 00	
"	Jan. 1894,	71,820 00	75,600 00

CHARLOTTE, COLUMBIA & AUGUSTA R. R.

First Mortgage,	Jan. 1892,	35 00	
"	July "	35 00	
"	Jan. 1893,	140 00	
"	July "	2,100 00	2,310 00
Second Mortgage,	Oct. 1892,	35 00	
"	Apr. 1893,	455 00	
"	Oct. "	14,035 00	14,525 00
Interest on Defaulted Coupons,		200 50	200 50

ATLANTIC, TENN. & OHIO R. R.

Rental,	Oct. 1893,	12,500 00	12,500 00
---------	------------	-----------	-----------

COLUMBIA & GREENVILLE R. R.

First Mortgage,	Jan. 1893,	30 00	30 00
-----------------	------------	-------	-------

ATLANTA & CHARLOTTE A. LINE R. R.

Organization Expenses,	Oct. 1893,	2,000 00	
First Preferred and Income,	Oct. 1893,	40,000 00	
First Mortgage,	Jan. 1894,	148,750 00	
Dividend,	Sep. 1893,	51,000 00	241,750 00
Total			\$ 712,292 50

EXHIBIT B.

(Referred to in testimony of A. S. Dunham on the account
of Carnegie Co.)

RESULT OF OPERATIONS
OF THE
RICHMOND AND DANVILLE R. R. SYSTEM,
(Except the Georgia Pacific Railway).
F. W. Huidekoper and Reuben Foster, Receivers,
From June 17, 1892, to July 31, 1893.

Gross Earnings,		\$11,660,789 50
Operating Expenses (including Taxes),		8,371,997 19
NET EARNINGS,		\$ 3 297 792 31
EXTRAORDINARY EXPENDITURES AGAINST NET EARNINGS:		
Construction R. & D. R. R.,	\$19,717 05	
" Fixed Leases,	88,416 10	
" Other Leased Lines,	124,001 19	
		\$ 232 134 34
Equipment, Rich'd & Danville,†	\$74,733 28	
" Leased Lines,	6,657 04	
		81,390 32
Expenses prior June 16, 1892,		185,562 13
Judgments purchased, Leased Lines,		9,565 39
Court Expenses,		51,082 44
		559,734 62
AVAILABLE NET,		\$ 2,738,057 69
LESS PAYMENTS MADE:		
Interest, Rentals and Dividends (for details see Exhibit A),	\$3,240,481 89	
Less Ga. Pacific,	\$232,127 50	
And Unpaid Coups.,	21,406 41	
		253,533 91
		\$2,995,947 98
Less Amount Paid I. & S. Worm- ser for Expenses in Cashing Cou- pons taken up in Expenses,	\$711 14	
Less, Charged R. & D. R. R. Co.: Macon & Northern	\$112 50	
Danville & Western,	175 00	
		287 50
		998 64
		\$2,994,949 34
Sinking Fund R. & D. 5 per cent. Equipment Mortgage,		67,205 00
Interest on Receivers' Certificates,		52,945 63
Car Trust Payments,		209,500 00
Organization Expenses,		5,747 02
		3,330,346 99
DEFICIT (see Exhibit C),		\$ 592,289 30

†INCLUDES COST OF FOUR LOCOMOTIVES.

RESULT OF OPERATIONS OF THE

RICHMOND AND DANVILLE R. R. SYSTEM,

Exclusive of the Georgia Pacific, Charlotte, Columbia and
Augusta, Columbia and Greenville and Spar-
tanburg, Union and Columbia,

From August 1, 1893, to December 31, 1893.

	August 1, 1893, to October 31, 1893.	Estimated November and December, 1893.	TOTAL.
Gross Earnings,	\$2,104,738 86	\$1,488,000 00	\$3,592,738 86
Operating Expenses (Inc. Taxes),	1,505,877 77	959,000 00	2,464,877 77
NET EARNINGS,	\$ 598,861 09	\$ 529,000 00	\$1,127,861 09
EXTRAORDINARY EXPENDITURES AGAINST NET EARNINGS :			
Construction, R. & D.,	3,678 91	5,553 70	9,232 61
" Fixed Leases,	7,950 00	923 50	8,874 40
" Other Leases,	15,092 56	2,518 32	17,610 88
Equipment, R. & D.,	4,311 35	2,480 00	6,791 35
" Leased Lines,	1,120 65		1,120 65
Expenses prior June 16, 1892,	13,951 84	3,000 00	16,951 84
Court Expenses,	500 00	16,000 00	16,500 00
TOTAL,	\$ 46,606 21	\$ 30,475 52	\$ 77,081 73
AVAILABLE NET,	552,254 88	498,524 48	1,050,779 36
LESS PAYMENTS MADE :			
Interest, Rentals, &c. (see Exhi- bit D),	493,489 75	133,246 10	626,735 85
Sinking Fund R. & D. 5 per cent.		37,790 00	37,790 00
Equipment Mortgage,	42,825 00	8,335 00	51,160 00
Car Trust Payments,			
Organization Expenses, Leased Lines,	624 99	500 00	1,124 99
TOTAL,	\$ 536,939 74	\$ 179,871 10	\$ 716,810 84
SURPLUS,	15,315 14	318,653 38	*333,968 52

For the five months ending December 31, 1893, November and De-
cember estimated the earnings of the system as described above decreased
as follows, as compared with the corresponding five months of the year
1892, due to the great depression in business throughout the country served
by these lines :

Gross Earnings, Decreased,	\$451,070 50
Net " "	289,214 60

*EXCLUSIVE OF PAYMENTS DUE JAN 1ST, 1894. SEE PAGE 6.

RICHMOND AND DANVILLE RAILROAD.

CASH STATEMENT RECEIPTS AND DISBURSEMENTS,

F. W. Huidekoper and Reuben Foster, Receivers.

June 16, 1892, to July 31, 1893.

RECEIPTS.

1892.

June 16.	To Cash received from Richmond & Danville R. R. Co. this date,	\$480,427 91
	For the period from June 16, 1892, to July 31, 1893.	
	To Transportation Receipts— Freight and Passenger,	12,555,601 09
	To Transportation Receipts— Express,	260,572 02
	To Transportation Receipts— Mail,	638,581 68
	Receipts from miscellaneous sources,	297,518 34
	Traffic balances collected from connecting lines,	424,315 71
	Amount received from Balto. & Ohio R. R. acc't rental Harri- sonburg Branch,	62,970 84
	Amount received from Ches. & Ohio R. R. account of rental,	37,250 00
	Amount received for accrued in- terest on Receivers' certificates sold between July 1, 1892, and December 31, 1892	3,454 37
	Amount received in settlement of accounts accruing prior to June 16, 1892,	671,363 40
		<hr/>
		\$15,432,055 46
		<hr/>

1893.

August 1.	To Cash balance transferred to Samuel Spencer, F. W. Huide- koper and Reuben Foster, Re- ceivers,	\$141,325 19
-----------	--	--------------

DISBURSEMENTS.

For the period from June 16, 1892, to July 31, 1893.

By Traffic Balances due connecting lines prior to June 16, 1892,	\$122,493 78
Loss and damage claims prior to June 16, 1892,	75,062 65
Pay rolls prior to June 16, 1892,	602,287 89
Material, supply and other vouchers prior to June 16, 1892,	437,351 90
Traffic Balances due connecting lines subsequent to June 16, 1892,	1,204,067 32
Loss and damage claims subsequent to June 16, 1892,	78,229 38
Pay rolls subsequent to June 16, 1892,	5,238,689 99
Material, supply and other vouchers subsequent to June 16, 1892,	3,732,346 75
Interest and rentals (see Exhibit A an- nexed),	3,249,481 89
Car trust payments and sinking funds,	486,368 16
Interest on Receivers' certificates,	56,400 00
Amount account purchase four locomo- tives,	7,950 46
Balance cash on hand,	141,325 19
	<hr/>
	\$15,432,055 36
	<hr/>

(This statement does not include \$1,000,000 of Re-
ceivers' Certificates issued, and the proceeds used solely to
take up outstanding supply, labor and other special claims
accruing prior to June 16, 1892.)

FROM AUGUST 1, 1893, TO NOVEMBER 30, 1893

Samuel Spencer, F. W. Huidekoper and Reuben Foster,
Receivers.

R E C E I P T S.

For the period from August 1, 1893, to November 30, 1893.

August 1. To Cash received from F. W. Huidekoper and R. Foster, Receivers, Richmond & Danville Railroad Co. this date,	\$141,325 19
Transportation Receipts, Freight and Passenger,	2,906,186 59
Transportation Receipts, Express,	42,238 30
Transportation Receipts, Mail,	117,116 29
Receipts from miscellaneous sources,	33,914 90
Traffic Balances collected from connecting lines,	120,545 78
Amount received from Balto. & Ohio acc't rental of Harrisonburg Branch,	7,437 50
Amount received from Ches. & Ohio Railroad account of rental,	5,708 34
Amount received from Receivers Ga. P. Railway account of balances transferred August 1, 1893,	68,688 75
Amount received in settlement of accounts accruing prior to June 16, 1892,	9,369 66
Amount received in settlement of accounts accruing prior to Aug. 1, 1893,	384,473 10
	<hr/>
	\$3,836,984 40
	<hr/>
1893.	
Nov. 30. To Balance Cash on hand,	\$247,418 69

DISBURSEMENTS.

For the period from August 1, 1893, to November 30, 1893.

By Traffic Balances due connecting lines prior to June 16th, 1892,	\$248 76.
Loss and Damage Claims prior to June 16th, 1892,	2,272 33
Pay Rolls prior to June 16th, 1892,	20 55
Material, Supply and other vouchers prior to June 16th, 1892,	18,613 75
Traffic Balances due connecting lines prior to August 1, 1893,	53,257 20
Loss and Damage Claims prior to August 1, 1893,	4,163 45
Pay Rolls prior to August 1, 1893,	467,562 79
Materials, Supply and other vouchers prior to August 1, 1893,	515,877 87
Traffic Balances due connecting lines subsequent to August 1st, 1893,	328,016 15
Loss and Damage Claims subsequent to August 1st, 1893,	29,441 06
Pay Rolls subsequent to August 1st, 1893,	838,564 35
Materials, Supply and other vouchers subsequent to August 1st, 1893,	616,643 15
Interest and Rentals (see Exhibit B,) annexed),	591,457 42
Car Trust Payments and Sinking Fund,	88,950 00
Amount account purchase four locomotives,	7,180 92
Sundry amounts paid Receivers Georgia Pacific Railway account collections made in error,	1,482 89
Amount due Receivers Georgia Pacific Railway Co. in settlement of account,	10,774 81
Amount paid Receivers C., C. & A. Railroad, Account net earnings that property August and September,	15,038 26
Balance cash on hand,	247,418 69
	<hr/>
	\$3,836,984 40
	<hr/>

(This statement does not include Georgia Pacific, as that road was placed in hands of Receivers on August 1st, 1893.)

ESTIMATED RECEIPTS AND DISBURSEMENTS FOR MONTH OF DECEMBER, 1893.

RECEIPTS.

Cash on hand, December 1,	\$247,418 69
Received from Agents, etc.,	710,373 42
Connecting Lines,	56,783 13
Miscellaneous,	34,364 39
Receivers Georgia Pacific, on account of advances made August 1,	32,113 51
Receivers Charlotte, Columbia & Augusta, on account of advances December 1,	20,000 00
Total,	<u>\$1,101,053 14</u> <u>=====</u>

DISBURSEMENTS.

Material, and all other Vouchers, includ- ing Taxes,	\$266,669 97
Connecting Lines,	115,808 36
Pay Rolls (including November),	361,736 94
Miscellaneous,	8,290 92
Account coupon payments,	5,000 00
Estimated cash balance December 31, 1893.	343,546 95
Total,	<u>\$1,101,053 14</u> <u>=====</u>

INTEREST AND RENTAL PAYMENTS

to be Provided for January 1st, 1894.

(Exclusive of Georgia Pacific and Columbia & Greenville,
for which see separate statements.)

Interest on Western North Carolina First Mortgage Bonds,	\$75,930 00
Interest on Roswell R'd First Mortgage Bonds,	1,137 50
Interest on Franklin & Pittsylvania R'd First Mortgage Bonds,	3,000 00
Interest on R., Y. R. & C. R'd First Mortgage Bonds,	16,000 00
Rental Charlotteville & Rapidan R'd,	17,650 00
Rental A. & C. Air Line (Interest on 1st Mortgage Bonds),	148,750 00
Rental North Carolina R'd,	131,043 85
Interest on Receiver's Certificates,	28,800 00
Car Trusts,	18,600 00
Interest on R. & D. 6% General Mortgage Bonds, due July 1, 1893, and Interest thereon,	185,307 30
Total,	<hr/> \$626,218 65
January 1, 1894.—Estimated Cash Balance on hand this date, as per statement,	<hr/> \$343,546 95
Estimated Cash Deficit January 1, 1894,	<hr/> <hr/> \$282,671 70

STATEMENT OF INTEREST, RENTALS AND DIVIDENDS
IN DEFAULT

On securities, which, under Plan of Reorganization, were
to be undisturbed (exclusive of Georgia Pacific
and Columbia & Greenville, for which
see separate statements).

R. & D. Consolidated 6 per cent., \$5,997,000, due January 1, 1894,		\$179,910 00
R. & D. Debentures 6 per cent., \$3,366,000, due October 1, 1892,	\$100,980	
R. & D. Debentures 6 per cent., \$3,366,000, due April 1, 1893,	100 980	
R. & D. Debentures 6 per cent., \$3,366,000, due October 1, 1893,	100,980	
	<hr/>	302,940 00
R., Y. R. & C. R. R'd 2nd mortgage 6 per cent., \$500,000, due Nov. 1, 1893,	\$ 15,000	
R., Y. R. & C. R. R'd Div. on stock 6 per cent., \$497,500, due Jan. 1, 1894,	14,925	
	<hr/>	29,925 00
Charlotte, Columbia & Augusta, 1st mortgage 7 per cent., \$2,000,000, due Jan. 1, 1894,		70,000 00
		<hr/>
		\$582,775 00

This does not make any allowance for interest and commission on floating debt (in arrears from August 1, 1892, about \$400,000) or on any of the bonds affected by the Reorganization plan, which see.

EXHIBIT "A."**INTEREST, RENTALS AND DIVIDENDS PAID**

From June 17, 1892, to July 31, 1893.

Richmond & Danville,	\$396,522 14
Atlanta & Charlotte Air Line,	633,250
North Carolina,	261,504 22
York River,	120,288 00
Richmond & Mecklenburg,	19,320 00
North-Western North Carolina,	40,290 00
Virginia Midland,	709,324 00
Franklin & Pittsylvania,	11,473 52
Washington, Ohio & Western,	43,000 00
Western North Carolina,	222,420 00
Charlotte, Columbia & Augusta,	273,685 00
Atlantic, Tennessee & Ohio,	25,000 00
Chester & Lenoir,	8,458 75
Cheraw & Chester,	6,599 25
Columbia & Greenville,	150,218 10
Spartanburg, Union & Columbia,	50,000 00
North-Eastern Railroad of Georgia,	20,265 00
Roswell Railroad,	3,412 50
Clarksville & North Carolina,	30 00
Oxford & Clarksville,	600 00
Macon & Northern,	112 50
Danville & Western,	175 00
Georgia Pacific,	232,127 50
Remaining in Coupon Agencies to meet un-	
presented Coupons,	21,406 41
	<hr/>
	\$3,249,481 89

EXHIBIT "B."**INTEREST, RENTALS AND DIVIDENDS PAID**

August 1, 1893, to November 30, 1893.

Richmond & Danville R. R'd,	\$48,509 75
North Carolina,	131,043 85
Virginia Midland,	199,664 50
North Eastern,	87 50
Western North Carolina,	1,470 00
Charlotte, Columbia & Augusta,	1,627 50
Atlanta & Charlotte Air Line,	93,000 00
York River,	311 00
Richmond & Mecklenburg,	30 00
Washington, Ohio & Western,	19,800 00
Atlantic, Tennessee & Ohio,	12,500 00
Remaining in Coupon Agencies to meet un-	
presented Coupons,	83,413 32
	<hr/>
	\$591,457 42

EXHIBIT "C."

Statement in detail of the deficit of \$592,289.30 in operating the Richmond and Danville R. R. System, excluding the Georgia Pacific Railway, for the period from June 17th, 1892, to July 31st, 1893, by F. W. Huidekoper and Reuben Foster, Receivers, showing on what lines the same has accrued.

	DEFICIT.	SURPLUS.
Richmond and Danville Railroad and Fixed Leases,	\$268,270 78	
OPERATING LEASES :		
Statesville and Western Railroad,	6,064 17	
Oxford and Henderson Railroad,	5,405 76	
High Point, Randleman, Asheboro' and Southern Railroad,		\$ 1,646 66
Yadkin Railroad,	2,087 86	
North Carolina Midland Railroad,	7,611 14	
Richmond and Mecklenburg Railroad,	5,593 89	
North Western North Carolina Railroad,	28,993 29	
Oxford and Clarksville Railroad,	8,528 21	
Clarksville and North Carolina Railroad,	398 55	
Virginia Midland Railroad,	7,027 43	
Franklin and Pittsylvania Railroad,—Narrow Gauge,	33,276 10	
Washington, Ohio and Western Railroad,		4,508 32
Western North Carolina Railroad,	12,500 97	
Charlotte, Columbia and Augusta Railroad,	118,729 42	
Atlantic, Tennessee and Ohio Railroad,	1,665 50	
Chester and Lenoir Railroad,	9,592 73	
Cheraw and Chester Railroad,—Narrow Gauge,	12,075 31	
Columbia and Greenville Railroad,	53,986 49	
Laurens Railroad,	11,519 69	
Asheville and Spartanburg Railroad,	10,773 03	
North Eastern Railroad of Georgia,	35,869 97	
Hartwell Railroad,		414 78
Roswell Railroad,	4,443 02	
Lawrenceville Railroad,	4,888 49	
Elberton Air Line,—Narrow Gauge,	9,556 66	
AMOUNT TO BALANCE—Deficit,		592,289 30
	\$598,858 46	\$598,858 46
To balance brought down, being deficit for the period from June 17th, 1892, to July 31st, 1893.	592,289 30	

EXHIBIT "D."**STATEMENT OF INTEREST PAYMENTS**

OF THE

RICHMOND AND DANVILLE R. R. SYSTEM,

Exclusive of the Georgia Pacific, Charlotte, Columbia and
Augusta, Columbia and Greenville, Spartanburg,
Union and Columbia,

From August 1, 1893, to October 31, 1893.

Richmond and Danville Railroad Company,	\$48,082 90
Atlanta and Charlotte Air Line Railway,	93,000 00
North Carolina Railroad,	131,043 85
Richmond, York River and Chesapeake Rail- road,	311 00
Richmond and Mecklenburg Railroad,	30 00
Virginia Midland Railway	199,664 50
Washington, Ohio and Western Railroad,	19,800 00
Western North Carolina Railroad,	1,470 00
North Eastern Railroad of Georgia,	87 50
	<hr/>
	\$493,489 75
	<hr/>

Estimated for the Months of November and
December, 1893.

Richmond and Danville Railroad,	\$4,361 10
Richmond, York River and Chesapeake Rail- road,	80 00
Atlantic, Tennessee and Ohio Rental,	12,500 00
Western North Carolina Railroad,	1,080 00
Virginia Midland Railway,	115,225 00
	<hr/>
	\$133,246 10
	<hr/>

EXHIBIT D.

(Referred to in Testimony of A. S. Dunham on Account
of Carnegie Co.)

RESULT OF OPERATIONS
OF THE
GEORGIA PACIFIC RAILWAY.

By Receivers of R. & D. R. R.

For the Period June, 17, 1892, to July 31, 1893.

Gross Earnings,		\$2,155,156 77
Operating Expenses (including Taxes),		<u>1,858,135 59</u>
NET EARNINGS,		\$ 297,021 18
EXTRAORDINARY EXPENDITURES AGAINST NET EARNINGS:		
Construction and Equipment,	\$ 37,373 94	
Expenses prior to June 16, 1892,	<u>82,784 43</u>	<u>120,158 37</u>
AVAILABLE NET,		\$ 176,862 81
LESS PAYMENTS MADE:		
Interest on First Mortgage (coupons July, 1892),	\$169,950 00	
" Second Mortgage,	562 50	
" Equipment Trust Certificates,	13,990 00	
" Equipment S. F. 5 per cent. Mortgage,	47,625 00	
Sinking Fund on do.	73,295 00	
Car Trust Payments,	136,368 16	
Organization Expenses,	<u>14,423 72</u>	<u>456,214 38</u>
DEFICIT,		\$ 279,351 57

CARNEGIE STEEL CO., LIMITED, APPELLEE.

435

RESULT OF OPERATIONS
OF THE
GEORGIA PACIFIC RAILWAY.

By Samuel Spencer, F. W. Huidekoper and Reuben Foster,
Receivers.

For the Period August 1, 1893, to December 31, 1893.

	ACTUAL. Aug. 1, 1893, to Oct. 31, 1893.	ESTIMATED. November and December.	TOTAL.
Gross Earnings,	\$495,187 69	\$433,000 00	\$928,187 69
Operating Expenses, Inc. current taxes,	347,958 63	265,000 00	612,958 63
NET EARNINGS,	\$147,229 06	\$168,000 00	\$315,229 06
EXTRAORDINARY EXPENDITURES AGAINST NET EARNINGS:			
Back Taxes paid,	15,000 00	15,000 00	
Construction Equipment,	9,012 49	1,000 00	
Expenses prior to June 16, 1892,	12,185 05	3,000 00	
	\$ 36 197 54	\$ 19,000 00	55,197 54
AVAILABLE NET,			\$260,031 52
LESS PAYMENTS MADE:			
Interest on First Mortgage,	60 00		
" 5 per cent. Equipment Mortgage,	22,050 00		
Sinking Fund,	38,360 00		
Car Trust Payments,	22,584 02	20,388 54	
Equipment Trust Certificates Princ'l,	42,500 00		
	\$125,554 02	\$ 20,388 54	145,942 56
ESTIMATED CREDIT BALANCE ON DECEMBER 31, 1893,			\$114,088 96
which will be represented by moneys, balances and materials after provid- ing for pay rolls and vouchers, viz.:			
Cash, see next page,	6,096 81		
Agents, Conductors, Express, Post- Office Department, Individuals, Railroads and Materials,	107,992 15		114,088 96
E. & O. E., December 26th, 1893.			

CONDENSED CASH STATEMENT.

RECEIPTS AND DISBURSEMENTS.

From August 1st, 1893, to November 30th, 1893,

Of

Samuel Spencer, F. W. Huidekoper and Reuben Foster,
Receivers,

THE GEORGIA PACIFIC RAILWAY COMPANY.

RECEIPTS.

Account of F. W. Huidekoper and Reuben Foster, former receivers,	\$ 31,538 02
Account of R. & D. R. R. Co. prior to June 16, 1892,	2 15
Freight and Passenger,	460,716 91
Miscellaneous,	77,434 01
Traffic Balances,	38,913 75
Mail,	9,559 18
Express,	2,212 79
Total,	<u>\$620,376 81</u>

DISBURSEMENTS.

Account of F. W. Huidekoper and Reuben Foster, former receivers,	\$ 6,217 23
Interest on First Mortgage,	60 00
Interest and Sinking Fund on 5% Equipment S. F. Bonds,	60,460 00
Loss and Damage,	6,564 78
Car Trusts,	79,917 56
Pay Rolls,	128,198 18
Traffic Balances,	71,586 05
Balances Transferred,	68,668 75
Materials and Supplies, Taxes and other Vouchers,	121,081 63
Miscellaneous Amounts collected from Agents R. & D. Receivers by error, and refunded,	403 56
Cash on hand November 30, 1893,	77,219 07
Total,	<u>\$620,376 81</u>

ESTIMATED RECEIPTS AND DISBURSEMENTS FOR DECEMBER, 1893.

RECEIPTS.

Cash on hand December 1st,	\$ 77,219 07
Receipts from Agents, etc.,	136,070 08
“ “ Traffic Balances,	38,131 27
“ “ Miscellaneous,	3,208 73
Total,	<u>\$254,629 15</u>

DISBURSEMENTS.

Material and all other Vouchers, including	
Taxes,	\$ 90,235 28
Traffic Balances,	18,717 86
Pay Rolls, October and November,	110,209 77
Miscellaneous,	1,700 92
Account of Balances transferred by Receivers	
of R. & D. R. R.,	22,113 51
Car Trust,	5,555 00
Estimated Cash Balance December 31st, 1893,	6,096 81
Total,	<u>\$254,629 15</u>

(MEMO.—No payments of interest on Georgia Pacific bonds have been made since July, 1892. The first mortgage coupons due January 1, 1893, were purchased by Messrs. Clyde and Stone, and against the July 1, 1896, coupons, the Reorganization Committee advanced 2½% on deposited First Mortgage bonds.)

E & O. E.,

December 26th, 1893.

EXHIBIT "C,"

Referred to in Testimony of A. S. Dunham, on Account of Carnegie & Co.

THE VIRGINIA MIDLAND RAILWAY COMPANY

TO

THE RICHMOND & DANVILLE RAILROAD COMPANY.

Lease For Ninety-Nine Years.

This indenture, made this the fifteenth day of April, in the year eighteen hundred and eighty-six, and executed in duplicate between the Virginia Midland Railway Company, party of the first part, and the Richmond and Dan-

village Railroad Company, party of the second part, both of said parties being corporations duly organized and existing under the laws of the State of Virginia, Witnesseth:

That whereas, the said Richmond and Danville Railroad Company and the said Virginia Midland Railway Company are duly authorized and empowered to enter into a contract of lease whereby the former company may hold, use and enjoy the railway, property, rights, privileges and franchises of the latter company; and

Whereas, the said Richmond and Danville Railroad Company holds, operates and controls a large system of railroads which furnish the only direct and practical connection for general southern business and traffic available to the said Virginia Midland Railway Company, thereby making a harmony of interest and unity of management and control of said two companies of primary importance to the best interest, economical operation and future development of the said last-named company; and

Whereas, such community of interest, management and control will be of reciprocal benefit and advantage to the said Richmond and Danville Railroad Company, and will furnish to said system of railroads a direct connection with general northern business and traffic; and

Whereas, it is to the best interest of both of said companies that an arrangement should be made whereby said objects, benefits and advantages will be permanently secured to them.

Now, therefore, this indenture further witnesseth: That the said The Virginia Midland Railway Company, for and in consideration of the promises and of the several provisions, covenants and agreements hereinafter mentioned, reserved and contained and to be kept and performed by the said party of the second part hereto, and in further consideration of the sum of one dollar to it paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath leased, demised and to farm letten, and by these presents doth lease, demise and to farm let, unto the said The Richmond and Danville Railroad Company, its successor, successors and assigns, the following described property; that is to say:

All and singular the whole of the lines of railway of the said The Virginia Midland Railway Company in the State of Virginia, from the city of Alexandria to the town of Gordonsville, in the county of Orange; from Orange Courthouse to the city of Danville, including the line of the Charlottesville and Rapidan Railroad from Orange Courthouse to Charlottesville, of which it is the lessee; from the town of Manassas, in the county of Prince William, to the town of

Harrisonburg, in the county of Rockingham; from the Narrow-Gauge Junction, in the county of Pittsylvania, to the town of Rocky Mount, in the county of Franklin, including the line of the Franklin and Pittsylvania Narrow-Gauge Railroad, from Pittsville to Rocky Mount, of which it is lessee; the Warrenton Branch and the Front Royal Branch, in all constituting four hundred and five and one-half miles, more or less, of united and continuous railway, together with all branches, additions, sidings and turnouts thereof, now owned or which may hereafter be acquired; all rails, bridges, culverts, wharves, fences, rights of way, workshops, machinery, stations, offices, depots, telegraph lines and instruments, engine-houses, tracks and all lands, buildings, fixtures, tenements and hereditaments whatsoever of the said Railway Company, now owned, or which may hereafter be acquired, and which are now, or may hereafter at any time, be used for the purpose of operating the said railway or conducting the business thereof; together with all the rolling stock, equipment, barges, floats, materials and furniture of said company, now owned or which may hereafter be acquired, as appurtenant thereto, for use upon or for the business of said railway; also, all the corporate rights, privileges and franchises (excepting such of its franchises, rights and privileges as are or may be necessary to preserve its corporate existence or organization and its interests in the provisions and covenants of this indenture); estates, tolls, rents, revenues, profits and receipts of said company of every kind, now owned or which may hereafter be acquired; all streets, ways, alleys, passages, water, water rights, water courses, easements, liberties and appurtenances whatsoever, now owned or which may hereafter be acquired by said company; and especially to include in this conveyance the interest and property of said company, in the line of railway, from Orange Courthouse to the town of Charlottesville, and the works, property, and franchises thereto pertaining, held by said company under certain covenants and agreements of lease entered into on the sixth day of June, 1878, between John S. Barbour, receiver, and the Charlottesville and Rapidan Railroad Company, in pursuance of certain decrees of the Circuit Court of the city of Alexandria, in the chancery suit of *Graham vs. The Washington City, Virginia Midland and Great Southern Railway Company*, and modified under a decree in the said cause, entered on the second day of July, eighteen hundred and seventy-nine; and further especially to include the interest of said company in the line of railway from Pittsville, in Pittsylvania county, to Rocky Mount, in Franklin county, and the

works, property and franchises pertaining thereto, held by said company under a contract of lease bearing date on the nineteenth day of September, eighteen hundred and seventy-eight, made between said John S. Barbour, receiver, and the Franklin and Pittsylvania Railroad Company, by virtue of the power granted to said receiver by a decree of said court, in said chancery suit; and further especially to include the benefit of an existing contract of lease between the Washington City, Virginia Midland and Great Southern Railroad Company and the Baltimore and Ohio Railroad Company, dated on the twentieth day of August, eighteen hundred and seventy-three, whereby said Baltimore and Ohio Railroad Company leased from said Washington City, Virginia Midland and Great Southern Railroad Company for a term of ninety-nine years, renewable forever, so much of its road as lies between Strasburg and Harrisonburg, on certain conditions therein set forth; and this shall include any lease of said property which may hereafter be executed between said Baltimore and Ohio Railroad Company and said Virginia Midland Railway Company, which latter company has succeeded to the rights of the said Washington City, Virginia Midland and Great Southern Railroad Company, under said lease, in lieu of or exchange for the said lease. And also all other and further property, personal or mixed, of every name, nature, kind or description whatsoever, which is now owned or may hereafter be acquired by the said The Virginia Midland Railway Company, party of the first part hereto.

And for and upon the considerations aforesaid, the said The Virginia Midland Railway Company hereby also assigns, transfers, relinquishes and sets over to the said The Richmond and Danville Railroad Company all the right, title, interest, claim and demand of the said The Virginia Midland Railway Company, in and to all, each and every the dues, demands, claims, contracts, choses in action, accounts, moneys and settlements of every name, kind, nature and description whatsoever, now held, claimed, owned or due to, or which hereafter may become due, accrue and be owing to the said the Virginia Midland Railway Company, its successor or successors, during the said demised term, from any persons, parties or corporations whomsoever or whatsoever in connection with the properties herein demised, or the business, traffic and operation thereof.

To have and to hold the said above-mentioned and described railways, premises, property and appurtenances unto the said The Richmond and Danville Railroad Company, its successor, successors or assigns, for and during and unto the full end and term of ninety-nine years from

the date of this indenture, *that is to say*, for a term of ninety-nine years, to commence on the fifteenth day of April, A. D. one thousand eight hundred and eighty-six, and to be fully complete and ended on the fifteenth day of April, A. D. one thousand nine hundred and eighty-five.

Provided always, nevertheless, that if default shall be made in the performance and fulfillment of any of the covenants and conditions hereinafter contained to be performed and fulfilled by the said party of the second part, and if such default shall continue for the period of three months after the said party of the first part shall have given written notice to the said party of the second part of its intention so to do, then and from receipt of such notice it shall be lawful for the said party of the first part, its successor, successors or assigns, into and upon the said demised premises, and every part thereof, wholly to re-enter, and the same to again have, re-possess and enjoy as in its first and former estate, anything hereinbefore or hereinafter contained, to the contrary notwithstanding.

And in consideration of the premises and of the said demise, assignment and transfer, it is hereby covenanted and agreed by and between the said parties heretofore as follows, viz. :

First. That at all times during the said demised term the said Richmond and Danville Railroad Company, its successor, successors or assigns, shall have the sole and exclusive right, power and authority to hold, occupy, use, enjoy, control, manage and operate the said demised lines of railway, premises, property, rights, privileges and franchises, and business thereof; to regulate, fix, vary, demand, collect and receive all and every of the emoluments, rates, tolls, freight charges and dues to accrue thereon and therefrom; to maintain and keep the rolling stock, equipment, tracks, bridges, superstructures, buildings and other property on said lines of railway, or belonging or appertaining thereto, and every part and portion thereof, in such state and condition of reparation, renewal and replacement, during the said demised term, as may be necessary to maintain the same in all respects in proper, adequate and efficient state and condition, or to properly, fully and adequately manage and conduct the business and enjoy the use of the said lines of railway; to change and alter, from time to time, the tracks, superstructure, bridges, culverts, switches, sidings, grade, gauge and appurtenances of said railways, and to purchase and acquire title to any additional real or personal property, privileges or franchises for the use, or with the view of increasing the capacity and facilities of the said demised railways and

premises, and the appurtenances thereto, for the more convenient, safe and profitable use and exercise of the property, rights and franchises hereby granted and demised, and further to do or cause to be done all and every such other lawful acts and things as may be necessary and judicious to properly, fully and adequately manage and operate the said lines of railway and property, and to conduct, prosecute, maintain, preserve, extend, facilitate and benefit the interests and business thereof; and shall have, use, exercise and enjoy all the rights, powers and authority aforesaid, and all other rights, powers, privileges and authority which can or may be lawfully exercised and enjoyed in, on or about the said demised lines of railway, premises and property, or which attach to, grow from or appertain to the rights, privileges, franchises and estate hereby granted and demised, as fully, exclusively and amply as the said party of the first part might or could use, exercise and enjoy the same if itself acting in the premises, and as fully, exclusively and amply as the said party of the first part has any lawful right or power to grant the same; and the said party of the second part is hereby fully authorized and empowered in its own name, or as the agent of, or in the name of the said party of the first part, to do, perform, make, execute, take, institute, and conclude all needful and lawful acts, arrangements, measures, or suits and proceeding at law or in equity, whatsoever, for the purposes aforesaid.

Second. That at all times during the said demised term the said party of the second part, its successor, successors or assigns, shall and will keep and maintain the said lines of railway, superstructure, rolling stock, equipment, property and appurtenances in as good condition in all respects as the same are now in, acts of God and public enemies excepted, and from time to time provide additional and necessary rolling stock, equipment, improvements, fixtures, appurtenances, facilities and property to fully and promptly carry on and conduct the business thereof, and shall and will, so far as the same can reasonably be done, keep the said lines of railway open for travel and traffic, and manage and operate the same so as to most efficiently promote, transact and accommodate the business thereof, and generally do every act and thing necessary thereto, or which may be by law obligatory upon it, or would be obligatory upon the said party of the first part, if acting in the premises, including the keeping and rendition of all accounts and reports; and shall and will use all reasonable diligence to collect and receive all the emoluments, revenues, rates, tolls, freight charges and dues which may

accrue from the business of said lines of railway and the management and operation thereof, and keep accurate accounts of the same and of all operating expenses or other expenditures made under any of the provisions of this lease, and furnish to the said party of the first part monthly accounts of the gross receipts and expenditures and annual accounts of all of said receipts and expenditures; and the books relating to said accounts shall at all times, during business hours, be open to the examination of the President or Vice-President of the said party of the first part, or of any agent duly authorized by either of them to examine the same, and for the purposes of determining that the provision in this article and covenant to "maintain the said lines of railway, superstructure, rolling stock, equipment, property and appurtenances in as good condition in all respects as the same are now in," is duly performed by the said party of the second part, its successor, successors or assigns, a careful examination of the condition of the same shall be made in the month of November in each and every year of the said demised term by the Chief Engineer of the said The Richmond and Danville Railroad Company to ascertain if the same is duly maintained as aforesaid, or to what extent, if any, there is failure so to do, the result of which said examination shall be promptly reported in writing to each of the said parties hereto, and upon the rendition of such report, or in case of failure to make the same, and in case the said party of the first part, its successor or successors, shall be dissatisfied therewith, and upon its or their demand in writing, two persons of experience and skill in such matters shall be appointed by each of the said parties hereto nominating one, to make said examination and report, and the said two persons so nominated and appointed shall appoint a third person as umpire to determine all questions as to which they may not agree, and the report of said two persons or the decision of said umpire, as the case may be, shall be binding and conclusive upon the said parties hereto, and all cost and expense of such examination, reference, and report shall be paid by the said party of the first part, its successor, successors or assigns.

Third. That the said party of the second part, its successor, successors or assigns, shall appropriate and apply the whole of the receipts, income, and revenues derived and received from the use and operation of the said demised lines of railways and property to the purposes and in the manner following, *that is to say* :

1st. To the payment of the current costs and expenses

of maintaining, repairing, and perpetuating during the said demised term, for public use, the said lines of railway, equipment and property hereby demised, and authorized to be acquired, and of using controlling, managing and operating the same, or otherwise incurred under any of the provisions of this lease, including reasonable and just compensation for the use of rolling stock and equipment not owned or held under the provisions of this lease, and the cost of new rolling stock, equipment, side tracks, stations, depots, offices, real or personal property, and betterments that the said party of the second part, its successor, successors or assigns, may from time to time find it necessary for the best interests of the property to procure or provide, and also to the payment of all sums, amounts, charges, claims and demands which now are or hereafter may become justly demandable from or payable by the said party of the first part by reason of any claim, liability, agreement, judgment, settlement, transaction or matter growing out of the management, use, control, and operation of the said demised lines of railway and property previous to the date of this lease, and of premiums for insurance, and all taxes, rates, charges, levies and assessments, ordinary and extraordinary, which now are or may at any time during the said demised term be by the United States of America, or by the State of Virginia, or other competent and lawful authority, charged, rated, levied, assessed or imposed on all or any part of the said demised lines of railway, premises, property or franchises, or on the traffic thereon.

2d. To the payment of the necessary expenses, not exceeding the sum of twenty-five hundred dollars per annum, of maintaining the corporate organization of the said The Virginia Midland Railway Company, party of the first part hereto; it being hereby covenanted and agreed that the said party of the first part shall fully maintain said organization during the said demised term.

3d. To the payment of the interest, as the same shall from time to time become due and payable, on the outstanding bonds issued under a mortgage deed of trust executed by the said party of the first part to Robert T. Baldwin, J. Wilcox Brown and Robert Garrett, as trustees, bearing date the first day of March, A. D. 1881, and covering the lines of railway, premises, property, revenues, rights and franchises hereby demised; said bonds being of even date with said mortgage, and to the authorized aggregate amount of seven million six hundred and thirty-five thousand dollars, but issued in six several series, bearing

different and varying rates of interest and times of maturity, with liens of varying priorities on different designated portions of the said demised railways and properties as follows, *viz.*:

First Series. Bonds to the amount of six hundred thousand dollars, payable twenty-five years after date, with interest at the rate of six per centum per annum, payable semi-annually, and secured by a *first* lien upon so much of the said demised railways, property, works, revenues and franchises as lie between Alexandria and Gordonsville, including the lease of and property in the Charlottesville and Rapidan Railroad, and the Warrenton Branch.

Second Series. Bonds to the amount of one million nine hundred thousand dollars, payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, and secured by a *second* lien upon so much of the said demised railway, property, works, revenues and franchises as lie between Alexandria and Gordonsville, including the Warrenton Branch, and its lease of and property in the Charlottesville and Rapidan Railroad, and a first lien on so much of the said railway, property, works, revenues and franchises as lie between Charlottesville and Lynchburg.

Third Series. Bonds to the amount of one million one hundred thousand dollars, payable thirty-five years after date, with interest, payable semi-annually, at the rate of five per centum per annum for the first five years and thereafter at the rate of six per centum per annum, and secured by a *third* lien upon so much of the said demised railway, property, works, revenues and franchises as lie between Alexandria and Gordonsville, including the Warrenton Branch, and its lease of and property in the Charlottesville and Rapidan Railroad, and a *second* lien on so much of the said railway, property, works, revenues and franchises as lie between Charlottesville and Lynchburg.

Fourth. Series. Bonds to the amount of nine hundred and fifty thousand dollars, payable forty years after date, with interest, payable semi-annually, at the rate of three per centum per annum for the first ten years, and of four per centum per annum for the next succeeding ten years, and of five per centum per annum for the remaining twenty years, and secured by a *fourth* lien upon so much of the said demised railway, property, works, revenues and franchises as lie between Alexandria and Gordonsville, including the Warrenton Branch, and its lease of and property in the Charlottesville and Rapidan Railroad,

and a *third* lien on so much of the said railway, property, works, revenues and franchises as lie between Charlottesville and Lynchburg.

Fifth Series. Bonds to the amount of one million seven hundred and seventy-five thousand dollars, payable forty-five years after date, with interest at the rate of five per centum per annum, payable semi-annually, and secured by a *first* lien upon the said demised railway and fixed property, revenues and franchises, between Manassas Junction and Harrisonburg, including the Front Royal Branch and the lease of the road from Strasburg to Harrisonburg to the Baltimore and Ohio Railroad Company, and a *fifth* lien upon the said railway, property, works, revenues and franchises from Alexandria to Gordonsville, including the Warrenton Branch, and its lease of and property in the Charlottesville and Rapidan Railroad, and a *fourth* lien on the said railway, property, works, revenues and franchises between Charlottesville and Lynchburg.

Sixth Series. Bonds to the amount of one million three hundred and ten thousand dollars, payable fifty years after date, with interest, payable semi-annually, at the rate of four per centum per annum for the first eight years and of five per centum per annum for the remaining forty-two years, and secured by a *first* lien upon the said demised railway, property, works, revenues and franchises between Lynchburg and Danville, including the Pittsville Branch, and the lease of and property in the Franklin and Pittsylvania Railroad, and a *sixth* lien on the lease of and property in the Charlottesville and Rapidan Railroad.

Interest on all of said bonds being payable on the first days of March and September in each year.

4th. To the payment of the interest, as the same shall from time to time become due and payable, on the outstanding general mortgage bonds issued under a mortgage deed of trust executed by the said party of the first part to the Central Trust Company of New York, as trustee, bearing date the fifteenth day of April, A. D. 1886, and covering the lines of railway premises, property, revenues, rights and franchises hereby demised, said bonds being of even date with said mortgage, and to the authorized aggregate amount of twelve million five hundred thousand dollars, with interest at the rate of not exceeding five per centum per annum, payable semi-annually on the first days of May and November in each and every year. And it is hereby expressly covenanted and agreed by and between the said parties hereto that in case the said receipts, in-

come and revenues derived from the earnings of the said demised lines of railway and property remaining after application as aforesaid, shall be insufficient to wholly pay and discharge any semi-annual amount of interest accruing upon any of the said above-mentioned general mortgage bonds at any of the times or dates when the same may become due and be payable by the terms thereof, the said party of the second part, its successor, successors or assigns, shall and will, during the continuance of the tenancy under this lease, provide and pay over to the said Central Trust Company of New York, as trustee aforesaid, or to its successor or successors in said trust, on or before the first day of May or November, as the case may be, upon which the said semi-annual amount of interest may become due and payable, such sum or amount of money as may be requisite to make up the difference between the amount of said receipts, income and revenues, which may be on hand and applicable to the payment of said semi-annual interest and the whole amount thereof to be paid at such time; the meaning and intention of this covenant being that the said party of the second part, for itself, its successor, successors and assigns, guarantees the payment of the interest on any and every of the said general mortgage bonds, while outstanding to the holders thereof, so long as this indenture of lease and the tenancy of the said party of the second part, its successor or successors thereunder, remains in full force and effect, but not otherwise.

5th. To the payment of the interest as the same shall from time to time be determined and declared and become due and payable on the outstanding income bonds issued under a mortgage deed of trust executed by the said party of the first part, to the Central Trust Company of New York, as trustee, bearing date the twenty-ninth day of November, A. D. 1881, and covering all the lines of railway, premises, property, revenues, income, earnings, rights and franchises hereby devised; said bonds being of even date with said mortgage and to the authorized amount of four million dollars, payable on the first day of January A. D. 1927, with interest not exceeding six per centum per annum, payable on the first days of January and July, out of net earnings in each year, to such amount of interest for each fiscal year as the Board of Directors of said party of the first part shall determine, but if less than six per centum be paid in any one year, even though less be earned, the unpaid interest is to accumulate to the credit of said bonds, until all arrears of interest, calculating the same at the rate of six per centum per annum from the date of issue of said bonds, shall have been paid.

6th. Any and all residue of said receipts, income and revenue remaining after each and every of the above-mentioned and specified payments have been made shall be paid over to the said party of the first part.

Fourth. That in case the net or surplus receipts or revenues derived and received from earnings of the said demised lines of railway and property, as aforesaid, by the said party of the second part, its successor, successors or assigns, shall not be sufficient to wholly meet and discharge the appropriations and application thereof provided for in Article Third of this Indenture, and other than in the *fourth* sub-division thereof, the said party of the second part, its successor, successors or assigns, may, at its or their option and election, advance the funds requisite to make up any deficiency in said receipts, or to wholly meet and discharge said appropriations and applications, and all and every such advance or advances of funds, with interest thereon, shall constitute a preferred indebtedness payable by the said party of the second part, its successor, successors or assigns, to itself or themselves, from and out of any residue of said receipts, income and revenues which otherwise, under the provisions of item six of said Article Third of this Indenture, would be payable over to the said party of the first part, its successor, successors or assigns, and the said party of the second part, its successor, successors or assigns, shall have and hold as security for the repayment thereof a valid and subsisting lien in the nature of a mortgage lien upon all the property, premises, rights and franchises hereby demised, and hereinbefore described, subject only to the mortgage liens specified or provided for in said Article Third of this Indenture, and said lien shall be and remain in full force and effect with said priority until said advance, advances and interest shall be wholly repaid and discharged, either as aforesaid or as hereinafter provided in Article Fifth hereof.

Fifth. And it is hereby expressly covenanted and agreed by and between the said parties hereto that as soon as the general mortgage bonds of the said party of the first part, authorized to be issued under its mortgage deed of trust executed to the Central Trust Company of New York, as trustee, dated the fifteenth day of April, A. D. 1886, shall be perfected and issued, the said party of the first part shall and will deposit with the said party of the second part the whole amount of the said general mortgage bonds authorized to be issued under said deed of trust in excess of the amount thereof therein required to be reserved by the said trustee, to-wit: the amount of eleven million six

hundred and thirty-five thousand dollars, which said general mortgage bonds, when so deposited, shall constitute and remain a special fund and provision for the repayment, in the manner hereinafter mentioned and designated, to the said party of the second part, its successor, successors or assigns, of all, any, each and every advance, disbursement, payment, outlay, obligation, guaranty or liability made, contracted, assumed or incurred by the said party of the second part, its successor, successors or assigns, to, for or on the account of the said party of the first part, its successor or successors, under or by reason of any of the covenants or provisions in this indenture of lease made or contained, and the said party of the second part, its successor, successors or assigns, shall have a full and perfect lien, preferable to all other liens, upon any, every and all of said deposited general mortgage bonds to secure said repayment, and shall have the full and perfect right as against the said party of the first part, its successor or successors, and all other parties or persons whomsoever, to pay and take to its own account, at the market price of said general mortgage bonds in the city of New York, on the day the same may be done, and hold, use, sell or dispose of, as its own property, and without any right, title, interest or claim therein of the said party of the first part, its successor or successors, from time to time, so many and such amounts of said general mortgage bonds so deposited as aforesaid, as may suffice and be requisite at such time or times and at such valuation, to wholly reimburse, pay off, liquidate and discharge any, every and all sum or sums then due and owing to the said party of the second part, its successor, successors or assigns, for or by reason of said advances, disbursements, payments, outlays, obligations, guarantees or liabilities made, contracted, assumed or incurred by it, to and for the account of, or to and for the benefit and advantage of the said party of the first part, its successor or successors, under or by reason of, or in the performance or exercise of any of the covenants, articles and subdivisions thereof, provisions and options in this indenture made, expressed, contained or given.

Sixth. That the said party of the second part shall and hereby agrees to assume and perform all existing contracts of the said party of the first part relating to the operation and traffic of said demised lines of railway so far as the said party of the first part may be lawfully bound or required to perform the same, and at all times to permit the President, Vice-President, committees of the Board of

Directors, and all duly appointed agents of the said party of the first part, to pass and travel over the said demised lines of railway without charge, for the purpose of officially investigating the business, management and operation thereof and reporting thereon to the said party of the first part. And in case differences growing out of any of the provisions of this indenture shall arise which the said parties hereto are unable to settle between themselves, three disinterested persons of experience and skill in railway managements and accounts shall be appointed by each of the said parties naming one, and the two so appointed naming the third, to constitute a board of arbitration, which shall hear the said parties, through counsel or otherwise, as they may desire, with their proofs, and decide and determine the matter of difference submitted, and the decision of a majority of said board of arbitration shall be final and conclusive upon the said parties hereto.

Seventh. That in case the said party of the second part, its successor, successors or assigns, shall, during the said demised term, make or cause to be made any permanent additions or improvements to the lands or structures belonging or appertaining to said railways, whereby the value of the said demised property and premises shall be enhanced, and which shall not have been paid for under the provisions of this lease from and out of the said receipts and revenues, or from and out of the said general mortgage bonds, such increased value shall be allowed and paid to the said party of the second part, its successor, successors or assigns, by the said party of the first part, its successor or successors, at the expiration or other sooner determination of the term hereby granted.

Eighth. That the said party of the second part, its successor, successors or assigns, keeping and performing the covenants and agreements in this indenture made and contained, by it or them to be kept and performed, shall and may at all times, during the term hereby granted, peaceably and quietly have, hold, use and enjoy the said demised property, premises, rights and franchises, without any manner of let, suit, trouble or hindrance of or from the said party of the first part, its successor or successors, or any other person or persons whomsoever claiming by, from or under it or them, lawful proceedings under the provisions of the mortgage deeds of trust mentioned in Article Third of this Indenture only excepted. And also, that the said party of the first part, its successor, successors or assigns, will at all times, during the continuance of the term hereby granted, upon the reasonable re-

quest of the said party of the second part, its successor, successors or assigns, make, do and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law, as may be necessary effectually to invest and secure to the said party of the second part, its successor, successors or assigns, the property, premises, rights and franchises hereby demised for the term and upon the conditions herein contained.

In witness whereof, the said The Virginia Midland Railway Company, and the said The Richmond and Danville Railroad Company, in pursuance of resolutions of their respective Boards of Directors, have caused their respective corporate seals to be hereto affixed, attested by their respective Secretaries, and these presents to be signed by their respective Presidents on the day and year first above written.

{ Corporate
Seal. }

THE VIRGINIA MIDLAND
RAILWAY COMPANY,
By JOHN McANERNEY,
Vice-President.

Attest :

T. H. WENTWORTH, Jr., Secretary.

{ Corporate
Seal. }

THE RICHMOND AND DAN-
VILLE RAILROAD COMPANY,
By A. S. BUFORD,
President.

Attest :

W. G. OAKMAN, Ass't Secretary.

Duly acknowledged and recorded in proper counties.

EXHIBIT C.

Deed of Lease.

THE PIEDMONT RAILROAD COMPANY

TO

THE RICHMOND AND DANVILLE RAILROAD COMPANY.

This deed, made this the 14th day of September, 1874, by and between The Piedmont Railroad Company, a corporation created by the laws of the State of North Carolina, of the first part, and The Richmond and Danville Railroad Company, a corporation created by the laws of the State of Virginia, of the second part, Witnesseth :

That whereas, in accordance with the resolutions adopted by the stockholders of said companies, respectively, in general meeting assembled, and in pursuance of the orders of the respective Boards of Directors of said companies, and by virtue of an enabling act of the General Assembly of Virginia, passed the 15th day of February, 1866, conferring authority upon the said Richmond and Danville Railroad Company, and by virtue of powers given to the said Piedmont Railroad Company by its charter, the said Piedmont Railroad Company and the said Richmond and Danville Railroad Company did enter into and duly execute a deed bearing date the 20th day of February, 1872, by which the said Piedmont Railroad Company did grant, lease and deliver unto the said Richmond and Danville Railroad Company the entire railroad of the said Piedmont Railroad Company with all its engines, rolling stock, materials and equipment of every description, and all real estate, depots, offices and other buildings and improvements, and all other property of every kind held, owned and used by the said Piedmont Railroad Company in connection with and for the benefit of the Piedmont Railroad together with all the franchises, rights of transportation and other rights of the said Piedmont Railroad Company, so as to vest the said Piedmont Railroad and all said property of every kind, real and personal, and all said rights and franchises in the said Richmond and Danville Railroad Company for the term of thirty years from the said 20th day of February, 1872, as fully and completely and to the same extent in all respects as the same is vested in and held, used and enjoyed by the said Piedmont Railroad Company under the provisions of its charter. And in consideration of such granting, leasing and demising, the said Richmond and Danville Railroad Company agreed and undertook, during the full term aforesaid, to occupy, use and run the said Piedmont Railroad (maintaining the same in like good condition as then, to the extent only of ordinary repairs), subject to and in accordance with the provisions of the company's charter, and for the purposes therein set forth, in connection with and as part of the line of the Richmond and Danville Railroad; and to yield and pay to the said Piedmont Railroad Company, until a larger or smaller sum shall be agreed upon by the Boards of Directors of the two companies aforesaid, the annual rent of sixty thousand dollars in semi-annual installments of thirty thousand dollars each, payable on the 20th days of August and February of each year during the continuance of this lease, and commencing on the 20th day of August, 1872.

And whereas, the said lease, the substance of which is above set forth, was declared by the express terms thereof, "to be subject at any time to modification or rescission by the mutual agreement of the boards of the two companies aforesaid."

And whereas, the said boards of the said two companies have mutually agreed to modify said lease in the manner hereinafter set forth.

Now, therefore, in consideration of the premises and of the stipulations hereinafter set forth, this deed further witnesseth,

That the said Piedmont Railroad Company doth hereby grant, lease and demise unto the said Richmond and Danville Railroad Company all its property, rights, franchises and privileges, as granted, leased and demised in the deed aforesaid, for the full term of eighty-six (86) years from and after the 20th day of February, 1874, fully to be completed and ended, to be held, used and enjoyed by the Richmond and Danville Railroad Company as set forth in said deed as aforesaid.

And in consideration thereof, the said Richmond and Danville Railroad Company agrees and binds itself to pay to the said Piedmont Railroad Company an annual rent of sixty thousand dollars, and at that rate every year until the full term of said lease shall expire, to be paid semi-annually in installments of thirty thousand dollars on the first days of February and August of each year, as provided in the former deed, and for the last year or fraction of a year in that proportion. And it also agrees during the full term aforesaid to occupy, use and run the said Piedmont Railroad (maintaining the same in like good condition as at present to the extent only of ordinary repairs), subject to and in accordance with the provisions of the company's charter, and for the purposes therein set forth, in connection with and as part of the line of the said Richmond and Danville Railroad Company. And it is further agreed between said parties that if the Richmond and Danville Railroad Company shall make default in its payment of the rent reserved as aforesaid, or any part thereof, at the time such rent may fall due as hereinbefore set forth, and shall remain in such default for a period of twelve months, then the said Piedmont Railroad Company shall have the right to enter upon and resume possession of the said road and works, and rolling stock and property of every description so leased as aforesaid, giving sixty days' notice of its intention so to resume such possession: provided, however, that the said Richmond and Danville

Railroad Company should still be in default at the termination of sixty days.

And this lease may at any time be annulled or modified by the mutual agreement of the boards of the two companies. But in respect to any modification of the amount of rent to be paid annually, the same may be increased by such mutual agreement, but not diminished.

And whereas, there is a deed of trust upon the property and works of the said Piedmont Railroad Company, which was executed to secure certain bonds of the said company now outstanding, and which will mature before the termination of this lease.

And whereas, if any sale should be made under said deed, this lease would be thereby terminated; in order to provide as far as practicable against such a contingency, the Richmond and Danville Railroad Company doth hereby promise the said Piedmont Railroad Company, and doth undertake to purchase the said bonds of the Piedmont Railroad Company and hold the same, still secured, however, by the deed aforesaid, as long as the said Richmond and Danville Railroad Company finds it practicable and expedient so to do, without requiring any sale under said deed, so that this lease may be continued beyond the maturity of said bonds, and thereafter as hereinbefore provided.

And this stipulation on the part of the Richmond and Danville Railroad Company is to be regarded as a part of the consideration of this lease.

And it is understood and agreed, that the said Richmond and Danville Railroad Company may sell, transfer, assign, convey and pledge this lease, if by said company it may be deemed judicious so to do, but said company is, nevertheless, to remain bound by all the stipulations and undertakings hereinbefore set forth.

Witness the following signatures and seals.

{ Seal
Piedmont
R. R. Co. }

THE PIEDMONT RAILROAD COMPANY,

A. S. BUFORD,
President.

{ Seal
R. & D.
R. R. Co. }

THE RICHMOND & DANVILLE R. CO.,

A. S. BUFORD,
President.

EXHIBIT "C."

Referred to in testimony of A. S. Dunham on account
of Carnegie Co.

NORTHEASTERN RAILROAD COMPANY
(Georgia).

WITH

THE RICHMOND AND DANVILLE RAILROAD COMPANY.

OPERATING AGREEMENT.

This agreement, made this, the fourteenth day of June, in the year one thousand eight hundred and eighty-six, and executed in duplicate, between the Northeastern Railroad Company, a corporation created by and organized under the laws of the State of Georgia, party of the first part, and the Richmond and Danville Railroad Company, a corporation created by and organized under the laws of the State of Virginia, party of the second part; Witnesseth:

That, whereas, the said The Richmond and Danville Railroad Company is duly authorized and empowered to "run, use, and operate, or lend aid to other railroads or "transportation lines, chartered by the laws of any State "other than Virginia, upon such terms as may be agreed "upon with the company or companies owning the same;" and

Whereas, the said The Richmond and Danville Railroad Company, under and by virtue of the terms and conditions of a contract of lease dated the twentieth day of March, A. D. 1881, is in possession of and wholly manages and controls the railroad, works, property, and traffic of the Atlanta and Charlotte Air Line Railway Company; and

Whereas, by an agreement in writing, dated the thirtieth day of April, A. D. 1881, between the city of Athens in the State of Georgia, and The Richmond and West Point Terminal Railway and Warehouse Company, the said city of Athens sold and assigned, and thereupon did duly transfer and deliver, to the said Terminal Company one thousand shares, of the par value of one hundred dollars each, of the capital stock of the Northeastern Railroad Company, the party of the first part hereto, in consideration whereof it was by said written agreement expressly covenanted and provided, by and between the said parties thereto, among other matters and things, that The Richmond and Danville Railroad Company and the said

Northeastern Railroad Company might contract, each with the other, "in lieu of a separate track from Lula toward "Clarksville, for the use by said last-named Company (the "said Northeastern Railroad Company) of any part of that "portion of the track of the Atlanta and Charlotte Air "Line Railway between Lula and such a point west of "Mount Airy," as might be found most eligible for commencing an extension of said Northeastern Railroad to Clarksville, Tallulah Falls, and Clayton; and

Wheras, the said city of Athens and the said Tallulah Falls are now respectively the southern and northern termini of the said Northeastern Railroad, and only the portions of said road extending from said city of Athens to Lula, on the line of the said Atlanta and Charlotte Air Line Railway, and from a point near Mount Airy, on said Air Line Railway, to said Tallulah Falls, have been completed, thus leaving a gap of about twelve miles intervening between the completed and operated portions of railroad belonging to the said Northeastern Railroad Company; and

Whereas, the said Northeastern Railroad is so located and situated as to be dependent upon the lines of railroad owned or controlled by the said The Richmond and Danville Railroad Company for a connection and through business to distant points, as well as a continuous business over its own entire route as aforesaid, and can be most surely, economically, and judiciously operated, and its business and traffic developed by a unity of management, under the direction of the said The Richmond and Danville Railroad Company; and

Whereas, in order to obtain the full use, benefit, and enjoyment of its said completed portions of railroad, and exercise and enjoy its corporate rights and privileges, and perform its corporate duties and obligations, and thereby promote competition and prevent monopoly, it is necessary to the said Northeastern Railroad Company to provide and maintain the means by which the two said present disjointed portions of its said railroad may be connected so as to transact and carry on a uniform and continuous traffic over both of its said portions of railroad and between its said northern and southern termini, which can only be secured in the most economical and advantageous manner by an arrangement and agreement for the permanent use of the roadway, works, and facilities of the said Atlanta and Charlotte Air Line and with and through the aid and assistance of the lessee thereof, the said party of the second part hereto, and thus forming a continuous and connected line of railway for the passage of trains, pas-

sener and general traffic, from said city of Athens to said Tallulah Falls; and

Whereas, a contract between the said The Richmond and Danville Railroad Company and the said Northeastern Railroad Company for the use of the said portion of the line of the said Atlanta and Charlotte Air Line Railway, whereby the ends, objects, and purposes last above recited were secured to the said party of the first part hereto, has expired and wholly determined; and

Whereas, the said Northeastern Railroad Company is, at the date of this agreement, justly indebted to the said The Richmond and Danville Railroad, in the sum of seventy-five thousand dollars, for compensation for said use of said Air Line Railway, under the terms and provisions of said agreement, and for labor, repairs, material and moneys advanced by it and for the use of said Northeastern Railroad Company, to which said indebtedness there are no offsets nor security; and

Whereas the equipment of the said Northeastern Railroad Company is insufficient and inadequate to the proper transaction of the present and prospective business of said company, and now needs to be renewed and increased, and hereafter to be maintained, repaired, renewed and further increased as the necessities of the full transaction and development of the business and traffic of said company may require and make expedient, and said company has not now or prospectively the means necessary to such use and purpose; and

Whereas, under existing circumstances, the indebtedness of the said Northeastern Railroad Company is steadily accumulating and increasing, and will continue to accumulate and increase, to the great jeopardy of all the interests of its stockholders, unless some agreement or arrangement be made whereby its earning capacity may be wholly developed and taken advantage of, and the means, facilities, connections, opportunities and influence to such end permanently secured; and

Whereas, it is necessary and imperative to the due protection and advancement of the interests of its stockholders and the maintenance and preservation of its corporate rights and privileges that the said Northeastern Railroad Company should provide for the objects and purposes above recited, and for protection against the said admitted indebtedness to the said party of the second part, and for the preservation of whatever rights may have been secured to it by the said agreement with the city of

Athens, dated the thirtieth day of April, A. D. 1881; and

Whereas, the said The Richmond and Danville Railroad Company deems it judicious and to the interest of both of the parties hereto to lend the necessary aid required to the ends above recited, upon the terms and conditions of this agreement;

Now, therefore, this agreement further witnesseth:

That for and in consideration of the premises, and of the covenants and agreements hereinafter made and contained, and of the sum of one dollar by each of said parties paid to the other, the receipt whereof is hereby acknowledged, the said Northeastern Railroad Company, party of the first part, and the said The Richmond and Danville Railroad Company, party of the second part, hereby covenant, promise and agree, each with the other, as follows, that is to say:

First. That from and after the date of this agreement, to-wit: the fourteenth day of June, in the year one thousand eight hundred and eighty-six, and during the continuance of this agreement, the said party of the first part, its successors or assigns, shall and may have the right and privilege to, and shall and will run its passenger and freight trains, and conduct its necessary and lawful business and traffic between Lula and Cornelia, over the Atlanta and Charlotte Air Line Railway, subject to and in the manner provided by the terms and conditions of this agreement.

Second. That as a condition precedent to the enjoyment of the aforesaid right and privilege, the said party of the first part, its successors or assigns, shall and will forward or cause to be forwarded over the said line of railway, all of its traffic of every kind passing or intending to pass to points accessible thereby.

Third. That for and in consideration of the use of said line of railway as aforesaid, and of the furnishing of rolling stock, equipment, services, management and supervision, as hereinafter provided and agreed, the said party of the first part, its successors or assigns, shall and will pay or cause to be paid to the said party of the second part, during the continuance of this agreement, in proportionate monthly installments, the sum of four hundred and fifty dollars per mile, in each and every year, and for each and every mile of said line of railway as aforesaid.

Fourth. That all trains of every kind and description and for every or any purpose whatsoever, run, used or ope-

rated over any and all portions of the railroad of the said party of the first part during the continuance of this agreement, shall be wholly and exclusively controlled, managed, operated, moved and directed by the said party of the second part, its officers, agents and servants, or such officers, agents or servants of the said party of the first part as the said party of the second part may require, accept or permit so to do, in whole or in part, and under such orders, rules, regulations and schedules as the said party of the second part may or shall from time to time adopt and prescribe for such purposes.

Fifth. That during the continuance of this agreement all passenger, freight, express, mail or other fares, rates, tolls, charges, receipts, revenues and income for transportation over the whole or any part of the railroad of the said party of the first part, shall be prescribed, fixed, varied, regulated or agreed upon, and demanded, collected, received and accounted for, as hereinafter provided, by the said party of the second part.

Sixth. That at all times during the continuance of this agreement the said party of the second part shall have the right to enter into and upon and take possession and charge of, and use, occupy and exclusively hold, manage, operate, control and possess, as fully and completely as the said party of the first part can or may do, the whole or any part of the railroad, real or personal property, tracks and appurtenances thereunto, rolling stock, equipment, depots, stations, shops, structures, fixtures, supplies, tools, implements and rights of passage or transportation now owned, or which may be hereafter acquired, by the said party of the first part for the construction, maintenance, use, enjoyment or operation of its said entire railroad; but all additional or further rolling stock, equipment or other property or facilities necessary to reasonably, efficiently and properly conduct, transact and accommodate the business and traffic of the said party of the first part, shall be furnished and provided by the said party of the second part, and all of the aforesaid property of the said party of the first part shall and will be properly repaired, renewed and maintained, so that the same shall at all times during the continuance of this agreement be and be kept in as good order and condition as it is in at the date hereof, acts of God and public enemies excepted. It being hereby expressly understood and agreed, nevertheless, that the said party of the second part shall at all times have the right to sell or dispose of all or any of said rolling stock or other property of the said party of the first part

which may become unfit for use, or not be needed, but the equivalent of all such property so sold or disposed of shall be replaced and returned at the expiration of this agreement.

Seventh. That the said party of the second part shall and will fulfil and perform, and shall have the benefit and advantage of all contracts heretofore made by the said party of the first part, and shall and will, in so far as it may undertake to manage and operate the said railroad and properties under the terms of this agreement, discharge and perform all contract or charter obligations heretofore entered into by or imposed upon the said party of the first part, or assumed by or imposed upon it in discharge of its duties as a common carrier of freight or passengers and which it may be lawfully bound or required to perform, and shall and will defend all suits, or actions at law or in equity now pending or which may be brought against the said party of the first part for any violation or neglect of said duties, or for any neglect, fault or omission of the said party of the first part, its agents or servants, while using, managing, controlling or operating the property, business, trains or cars of the said party of the first part, and pay and discharge all just and valid claims or judgments that may be made or obtained against the said party of the first part, by reason of any such neglect, violation, fault or omission.

And to the end that the full intent and meaning of this agreement may be carried into effect, and the mutual benefits and advantages thereof secured to the said parties hereto, it is expressly understood and agreed that the said party of the second part shall have, exercise and enjoy full power and authority to do or cause to be done all and every act or thing that may be necessary or judicious to properly, fully and adequately control, manage and operate the said railroad and property of the said party of the first part, and to conduct, prosecute, maintain, preserve, extend, facilitate, benefit and advance the interests and business thereof; and shall have, use, exercise and enjoy all the rights, powers and authority hereinbefore given and agreed to, and all rights, powers, privileges and authority in the premises which can or may be lawfully exercised and enjoyed in, on or about the said railroads and property, as fully, exclusively and amply as the said party of the first part might or could exercise, use, occupy or enjoy the same if itself acting in the premises; and the said party of the second part is hereby fully authorized and empowered in its own name, or as the agent of, or in the

name of the said party of the first part to do, perform, make, execute, take, institute, adjust, settle, compromise, agree to and conclude all needful and lawful acts, arrangements, measures, agreements, things or suits, actions and proceedings at law or in equity whatsoever, for the purpose aforesaid.

Eighth. That to the end that the management of the said railroad, property and business may be united under the management and direction of the said party of the second part, as hereinbefore provided, and the intent of this agreement, and benefits enuring to the said party of the first part therefrom, wholly secured by harmony and entire unity of such management, the said party of the first part shall and will at all times during the continuance of this agreement, appoint, employ and retain as superintendent, traffic manager, general passenger and freight agent, such persons only as may be nominated and designated by the said party of the second part for such positions, respectively, and all of whom shall be under the general orders and direction of the general manager of the said party of the second part in all matters regarding the running, management, control and operation of the trains, business and affairs of the said party of the first part, as provided for in this agreement, and that the said party of the first part, its successors or assigns, shall and will, from time to time, make and execute such other and further assurances and instruments for the fulfilment of the intent, terms and provisions of this agreement, and for the uninterrupted continuance and execution thereof as the said parties, or either of them, may be advised by counsel to be necessary and proper; and that each of the said parties hereto shall and will, from time to time, as shall be requisite during the continuance of this agreement, in co-operation or separately, take such action as may be necessary, proper and practical for the maintenance of this agreement, and for the quiet use and enjoyment by the said party of the second part of the management, control, rights and privileges herein covenanted and agreed to.

Ninth. That in case any difference shall arise as to the proper meaning and construction of any of the covenants and provisions of this agreement, or as to the manner in which the same may have been, or should be executed and carried out by the said parties, respectively, the question or matter of difference so arising shall be referred to the decision of two intelligent and wholly disinterested persons, who shall be selected from time to time, as occasion

may require, one by each of the said parties hereto, and the award of the two persons so selected, in case they agree, or of an umpire selected by them in case of their inability to agree, shall be final and binding upon the parties hereto, and in case either of the parties hereto shall fail or neglect to select and appoint an arbitrator to settle any disputed question, as aforesaid, within thirty days after receiving a written request from the other party so to do, then the party making such request shall have the right to select and appoint both of said arbitrators.

Tenth. That during the continuance of this agreement, and not longer, the present indebtedness of the said party of the first part to the said party of the second part, hereinbefore recited, and amounting, at the date of this agreement, to the sum of seventy-five thousand dollars, shall be suspended, subject to the provisions of this contract hereinafter made and contained in regard thereto; the said party of the first part for itself, its successors and assigns hereby expressly waiving any and all benefit, privilege or advantage of any and every statute of limitation of the State of Georgia or any other State, territory, government or authority whatsoever, and hereby expressly admitting the validity and justness of said claim, and affirming the right of action thereon of the said party of the second part at the expiration of this agreement, without application thereto of any said statute of limitation or other bar: provided, nevertheless, that the said party of the second part shall and may have the right to appropriate and apply, or have appropriated and applied, to or towards the payment of said suspended indebtedness any moneys, claims, demands, incomes or revenues of the said party of the first part, remaining after the appropriation and applications thereof hereinafter provided for.

Eleventh. That the said party of the second part shall and will, on or before the first days of May and of November, in each and every year, provide or cause to be provided and applied thereto, such sums of money as may be necessary at the times aforesaid, to wholly pay and discharge the interest accruing on the outstanding bonds issued under a first mortgage deed of trust executed by the said party of the first part to R. L. Moss and R. K. Reaves, as trustees, bearing date the first day of May, A. D. 1876, and payable the first day of May, A. D. 1896, with interest at the rate of seven per centum per annum, payable semi-annually, on the first days of May and November, as aforesaid. It being expressly understood and agreed, however, that the coupons for all interest so paid, shall be delivered

uncancelled to the said party of the second part, and be held by it, with all the rights and equities inuring under the provisions of the said mortgage deed of trust to the holder of said coupons in default of payment thereof by the said party of the first part, as therein provided; the said party of the second part hereby agreeing, nevertheless, not to assert said rights or enforce said equities, unless under proceedings instituted by other parties under the provisions of said mortgage deed of trust, and that the State of Georgia shall not be liable as guarantor of any of said coupons so held uncanceled by the said party of the second part.

Twelfth. That the said parties of the second part shall and will keep separate and distinct accounts of all moneys collected, received and disbursed by it to and for the account of the said party of the first part under the terms and provisions of this agreement, which said accounts shall at all times, during business hours, be open to the inspection of the president, treasurer or other agent or officer thereto duly authorized, of the said party of the first part, and shall and will furnish to the said party of the first part annual statements of said receipts and disbursements.

Thirteenth. That the said party of the second part shall and will appropriate and apply the whole of the receipts, incomes and revenues, received and collected by it, to and for the account of the said party of the first part, as aforesaid, to the purpose and in the manner following, that is to say:

1st. To the current costs and expenses of maintaining, furnishing, repairing and replacing the said railroad tracks, superstructure, rolling stock, equipment and real and personal property of the said party of the first part, and of using, managing, controlling and operating the same or otherwise, including all rental, trackage and other outlay incurred under the provisions of this agreement, and to the payment of all sums, amounts, charges, claims and demands which now are or hereafter may become justly demandable from or payable by the said party of the first part by reason of any claim, liability, agreement, judgment, settlement, transaction or matter growing out of the use, control, management and operation of the said railroad and property of the said party of the first part, since the first day of July, A. D. 1885, including, nevertheless, any damages which may be awarded against the said party of the first part in any action or proceeding at law or in equity now pending, but not including interest or principal

of any bonded debt, or the indebtedness to the said party of the second part mentioned in Article Tenth of this agreement, and to the payment of premiums for insurance, and all taxes, charges, rates, levies and assessments, ordinary, and extraordinary, which now are or may at any time during the continuance of this agreement be by the State of Georgia, or the United States of America, or other competent and lawful authority, charged, rated, levied, assessed or imposed on the said railroad, premises or property of the said party of the first part, or on the traffic thereon.

2d. To the re-payment to the said party of the second part of any interest advanced and paid by it, or of any portion thereof as represented by the coupons held therefor, under the provisions of Article Eleventh of this agreement; and all of said coupons so paid shall be, at each settlement of accounts, as herein provided, surrendered and delivered to the said party of the first part for cancellation.

3d. To the payment of the interest as the same may have accrued and be unpaid, and may from time to time become due and payable on the outstanding bonds of the said party of the first part, issued under its certain general mortgage deed of trust to the Central Trust Company of New York, as trustee, bearing date the first day of November, A. D. 1881, and payable on the first day of November, A. D. 1926, with interest at the rate of six per centum per annum, payable semi-annually on the first days of May and November in each and every year.

4th. To the payment to the said party of the second part of the interest, at the rate of six per centum per annum, accrued on its said suspended debt mentioned in Article Tenth of this agreement.

5th. To the payment of the principal of the said suspended indebtedness to the said party of the second part, mentioned in Article Tenth of this agreement, in the proportion of not more than five thousand dollars of said indebtedness in any one year.

6th. And any and all surplus of said received and collected receipts, incomes and revenues, remaining after the appropriations and applications aforesaid shall be paid over yearly to the said party of the first part, its successors or assigns.

Fourteenth. That when the principal of either of the said mortgage deeds of trust of the said party of the first

part shall be due and become payable, the said party of the first part, its successors or assigns, shall and will in good faith, earnestly co-operate with the said party of the second part in providing for the extension or renewal of said bonds, or replacement and refunding thereof by new bonds under new mortgage deeds of trust, or so many and such amounts thereof as at the time of said maturity of either class of said bonds the said party of the second part may deem best and most judicious to so extend, renew, replace or refund, and that, to such end, the said party of the first part, its successor or successors, will, when thereto requested by the said party of the second part, take such corporate action and duly execute, or cause to be duly executed, such bonds and mortgage deeds of trust, upon the whole or any part of its properties, rights, privileges and franchises, as may be found to be necessary and requisite to provide for the payment, extension, renewal, replacement or refunding of the said present first and general mortgage bonds; and in case of such new issue of bonds for the purpose aforesaid, the second and third sub-divisions of Article Thirteenth of this agreement and the appropriation of the said receipts, incomes and revenues, as therein provided for, shall apply to the payment of the interest upon said new bonds in like manner as is therein provided in regard to the payment of the interest upon the said present bonds therein mentioned.

Fifteenth. That in case the net or surplus receipts or revenues derived and received from earnings of the said lines of railway and property, as aforesaid by the said party of the second part, its successor, successors or assigns, shall not be sufficient to wholly meet and discharge the appropriations and applications thereof provided for in Article Thirteenth of this agreement, the said party of the second part may, at its option and election, advance the funds requisite to make up any deficiency in said receipts or to wholly meet and discharge said appropriations and applications, and all and every such advance or advances of funds, with interest thereon, shall constitute a preferred indebtedness payable by the said party of the second part to itself from and out of any residues of said receipts, income and revenues which otherwise, under the provisions of item sixth of said Article Thirteenth, would be payable over to the said party of the first part, its successors or assigns; and the said party of the second part shall have and hold as security for the re-payment thereof, or of the certificates hereinafter provided for, a valid and subsisting lien from the date of the rendition of statements of accounts of said advances, or date of said certificate, in the

Seventeenth. That in case the said party of the second part, during the continuance of this agreement, shall make or cause to be made any permanent additions or improvements to the lands or structures, rolling stock, equipment or other property belonging or appertaining to said railways, whereby the value of the said demised property and premises shall be enhanced, and which shall not have been paid for under the provisions of this agreement from and out of the said receipts and revenues; any such increased value not so settled for and repaid, shall be allowed and paid to the said party of the second part, by the said party of the first part, its successors and assigns, at the expiration of this agreement.

Eighteenth. This agreement shall be and continue in force until the fourteenth day of June, A. D. one thousand nine hundred and eleven, and from year to year thereafter, unless either party shall give the other party a written notice at least ninety days prior to the said fourteenth day of June, A. D. 1911, or of any year thereafter, in which case this agreement shall terminate, cease, be annulled and become void at and from the time fixed in said notice.

In witness whereof, the said Northeastern Railroad Company and the said The Richmond and Danville Railroad Company, by due action and authority of their respective boards of directors, have caused these presents to be signed by their respective presidents, and sealed with their respective corporate seals, attested by their respective secretaries on the day and year first above written.

{ Corporate
Seal. }

NORTHWESTERN
RAILROAD COMPANY,
By POPE BARROW,
President.

Attest :

G. H. YANCY, Sec'y *pro tem*.

{ Corporate
Seal. }

THE RICHMOND AND DAN-
VILLE RAILROAD COMPANY,
By A. S. BUFORD,
President.

Attest :

W. G. OAKMAN, Ass't Secretary.

**COMPLAINANT'S EXCEPTIONS TO MASTERS' REPORT ON
INTERVENTION OF CARNEGIE STEEL
COMPANY, LIMITED.**

Filed June 15, 1894.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York and others, Complainants, <i>vs.</i> Richmond & Danville Railroad Com- pany and others, Defendants.	}	In Equity. Consolidated Cause.
---	---	-----------------------------------

In the matter of the intervention of the Carnegie Steel Company (Limited).

The complainants herein except to the finding and report of the Special Masters in favor of the above-named intervenor, and for cause assign :

First. That the said masters erred in reporting that the said intervenor had any lien, claim or equity whatsoever against any part of the property or franchises of the Richmond & Danville Railroad Company, in preference to the lien of the mortgage herein foreclosed or any of the bonds issued thereunder.

Second Said masters erred in finding that the intervenor had any claim or lien under the statute of Virginia as against any bonds issued under the consolidated mortgage executed by the Richmond & Danville Railroad Company.

Third. The masters erred in not finding that the lien of the consolidated mortgage executed by the Richmond & Danville Railroad Company to the Central Trust Company was not a paramount lien upon the entire railroad, property and franchises therein described, and superior to any claim of the intervenor either under the statute of Virginia or otherwise.

Fourth. The said masters erred in not reporting against any claim or lien or right in favor of the intervenors as against the said consolidated mortgage bonds.

Fifth. The said masters erred in not reporting that any claim or lien of the said intervenor was junior in rank and equity, and postponed to the lien of the receivers' certificates issued under the orders of the court in this action.

FINAL DECREE.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND
FOR THE EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York et al.	}	Consolidated Causes.
<i>vs.</i> The Richmond & Danville Rail- road Company et al.		

In the matter of Exceptions filed to the Masters' report on
the claim of The Carnegie Steel Company (Limited).

This cause coming on to be heard on the exceptions
filed by the Carnegie Steel Company, (Limited) to the re-
port of the special masters filed in this cause; and also on
the exceptions filed by the Central Trust Company, mort-
gagee to said report; and the said report and the excep-
tions thereto, and the testimony taken on said exceptions,
and the several exhibits filed with such testimony having
been read and considered, and the arguments of counsel
for the respective parties heard, the court, being fully ad-
vised in the premises, doth order, adjudge and decree as
follows:

1st. The court finds that the material allegations of
the petition and amended petition of the Carnegie Steel
Company (Limited) are true, and the said company did
furnish to the defendant Railroad Company, at the several
dates and times named in said petition, steel rails to the
total value of one hundred and twenty-five thousand and
sixty-seven dollars and thirty-nine cents (\$125,067.39),
which said sum the said defendant Railroad Company un-
dertook and agreed to pay to the said Carnegie Steel Com-
pany therefor, and that said steel rails were thereupon
used by defendant Railroad Company.

2nd. That said sum was never paid by said defendant
Railroad Company, but that the same remains due and
unpaid.

3rd. That the earnings of said defendant Railroad
Company, which should have been used for the payment of
current expenses, including therein this claim, have been
used for the benefit of mortgage creditors, in a sum more
than sufficient to pay said claim in full.

4th. That prior to May 1st, 1888, bonds of the Rich-
mond and Danville Railroad Company known as consoli-
dated bonds were issued to the amount of \$1,621,000; and
that since that date such bonds have been issued to the
amount of of \$2,906,000.

It is therefore, by the court, this 16th day of December, 1895, considered. adjudged and decreed :

1st. That the exceptions filed by the Carnegie Steel Company (Limited) to the master's report be and the same are hereby sustained, and the exceptions filed by the Central Trust Company, mortgagee, be and the same are hereby overruled.

2nd. That the claim of the Carnegie Steel Company (Limited) for one hundred and twenty-five thousand and sixty-seven dollars and thirty-nine cents (\$125,067.39), with interest thereon from the time when the respective items thereof became due and payable by the Richmond and Danville Railroad Company, is entitled to priority of payment out of the fund resulting from the sale of the mortgaged property, over the bonds secured by the mortgage foreclosed by the decree heretofore passed in this cause.

3rd. That the claim of the Carnegie Steel Company (Limited) for one hundred and twenty-five thousand and sixty-seven dollars and thirty-nine cents (\$125,067.39), with interest thereon from the time the respective items thereof became due and payable, by reason also of the statutes of Virginia, is entitled so priority of payment out of the fund resulting from the sale of the mortgaged property, over such of the bonds secured by the mortgage foreclosed by the decree heretofore passed in this cause as were issued after May 1, 1888, being \$2,906,000 in amount.

4th. That said interest to the date of this decree amounts to the sum of twenty-nine thousand eight hundred twenty-eight dollars, fifty-eight cents (\$29,828.58), making the total amount payable as aforesaid the sum of one hundred and fifty-four thousand eight hundred and ninety-five dollars and ninety-seven cents (\$154,895.97).

5th. That the purchaser at the sale heretofore made, or his assigns, do forthwith pay to the Carnegie Steel Company (Limited) said sum of one hundred and fifty-four thousand eight hundred and ninety-five dollars and ninety-seven cents (\$154,895.97), in compliance of the terms of the decree of sale heretofore passed, whereby the purchaser at such sale, or his assigns was required to pay off and satisfy all claims filed in this cause, which this court should adjudge prior to the mortgage by said decree foreclosed.

NATHAN GOFF,
U. S. Circuit Judge.

Dec. 16, 1895.

PETITION FOR APPEAL.

Filed January 10th, 1896.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York et als, Complainants, <i>vs.</i> Richmond & Danville Railroad Company et als, Defendants.	}	Consolidated Cause.
---	---	---------------------

In the matter of the invention of the Carnegie Steel Company, Limited.

The Southern Railway Company, a corporation organized under the laws of Virginia, purchaser at the foreclosure sale under the decree entered in the above entitled cause, hereby prays an appeal to the United States Circuit Court of Appeals for the Fourth Circuit from the final order and decree of this honorable court, rendered in this cause on the 16th day of December, 1895, but which was not actually filed with the clerk until the 26th day of December, 1895, declaring that the claim of the Carnegie Steel Company, Limited, a joint stock company under the laws of the State of Pennsylvania, entitled thereunder to sue and be sued, against the Richmond & Danville Railroad Company for one hundred and twenty-five thousand and sixty-seven dollars and thirty-nine cents (\$125,067.39) and twenty-nine thousand eight hundred and twenty-eight dollars and fifty-eight cents (\$28,828.58), interest thereon, in all, \$154,895.97, is entitled, owing to diversion of the earnings of the defendant Railroad Company to priority of payment out of the fund resulting from the sale of the mortgaged property, over the bonds secured by the mortgage foreclosed by the decree heretofore passed in this cause; and that sums are also entitled to priority of payment, by reason also of the Virginia statutes, out of the said fund over such of said bonds as were issued after May 1st, 1888, being \$2,906,000 in amount; and that the purchaser do forthwith pay to the Carnegie Steel Company, Limited, the said sum of \$154,895.97.

Your petitioner prays that said decree may be reversed.

Your petitioner also prays that this honorable court will fix the penalty of a bond to be given by your petitioner, which shall operate as a *supersedeas* upon the said decree appealed from.

Your petitioner further files herewith, in compliance

with the Acts of Congress and rules of court in that behalf, its assignment of errors.

SOUTHERN RAILWAY COMPANY,
Purchaser.

WILLIS B. SMITH, Solicitor.

ASSIGNMENT OF ERRORS.

Filed January 10th, 1896.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York et al. <i>vs.</i> The Richmond & Danville Railroad Company et al.	}	Consolidated Cause.
---	---	---------------------

In the matter of the Intervention of the Carnegie Steel Company, Limited.

Comes now the Southern Railway Company, purchaser or the property of the Richmond & Danville Railroad Company under the foreclosure sale in this cause, and prays an appeal from the final order and decree of this court of December 16th, 1895, decreeing the claim of the Carnegie Steel Company, Limited, for the sum of one hundred and twenty-five thousand and sixty-seven dollars and thirty-nine cents (\$125,067.39), principal, and for twenty-nine thousand eight hundred and thirty-eight dollars and fifty-eight cents (\$29,828.58) interest thereon, against the defendant company, to be entitled to priority of payment, out of the fund resulting from the sale of the mortgaged property, over the bonds secured by the mortgage foreclosed by the decree passed in this cause, and that said principal sum of \$125,067.39, with interest thereon as aforesaid is also entitled to priority of payment, by reason of the statute of Virginia, out of the said fund resulting from the sale of the mortgaged property over such of said bonds as were issued after May 1st, 1888, being \$2,906,000 in amount; and in decreeing that the purchaser pay to said intervenor the sum of \$154,895.97, the amount of said sums of principal and interest.

It alleges that in said order and decree of the 16th December, 1896, there is error in this, to-wit:

1. The court erred in finding that the material allegations of the petition and amended petition are true, in so

far as said allegations were that there had been a diversion of the earnings of the said defendant company.

2. The court erred in finding that the material allegations of said petition and amended petition are true, in so far as said allegations set up a lien under the Statutes of Virginia.

3. The court erred in finding that the earnings of the defendant Railroad Company, which should have been used for the payment of current expenses, including therein this claim, had been used for the benefit of mortgage creditors, in a sum more than sufficient to pay this claim in full.

4. The court erred in sustaining the exceptions filed by the intervenor to the masters' report.

5. The court erred in overruling the exceptions filed by the Central Trust Company mortgagee to said report.

6. The court erred in overruling the first of said exceptions filed by the Central Trust Company Mortgagee, "That the said masters erred in reporting that the said intervenor had any lien, claim or equity whatsoever against any part of the property or franchises of the Richmond and Danville Railroad Company in preference to the lien of the mortgage herein foreclosed, or any of the bonds issued thereunder."

7. The court erred in overruling the second of said exceptions, "Said masters erred in finding that the intervenor had any claim or lien under the Statutes of Virginia as against any bonds issued under the consolidated mortgage executed by the Richmond and Danville Railroad Company."

8. The court erred in overruling the third of said exceptions, "The masters erred in not finding that the lien of the consolidated mortgage executed by the Richmond and Danville Railroad Company to the Central Trust Company was a paramount lien upon the entire railroad, property and franchises therein described, and superior to any claim of the intervenor, either under the Statute of Virginia or otherwise."

9. The court erred in overruling the fourth of said exceptions, "The said masters erred in not reporting against any claim or lien in favor of the intervenors as against the said consolidated mortgage bonds."

10. The court erred in overruling the fifth of said exi

ceptions, "The said masters erred in not reporting that any claim of lien of the said intervenor was junior in rank and equity, and postponed to the lien of the receivers' certificates issued under the orders of the court in this action."

11. The court erred in decreeing that the amount of said claim and interest was entitled to priority of payment, out of the fund resulting from the sale of the mortgaged property, over the bonds secured by the mortgage foreclosed by the decree in this cause.

12. The court erred in decreeing that the said claim and interest thereon was entitled, by reason also of the Statute of Virginia, to priority of payment out of the fund resulting from the sale of the mortgaged property over such of the bonds secured by the said mortgage as were issued after May 1st, 1888, being \$2,906,000 in amount.

13. The court erred in giving said claim and interest thereon the aforesaid priority over the said \$2,906,000 of bonds, and thereby disregarded the Constitution of the United States, which provides, in Section X Article I, that no State shall pass any law impairing the obligation of contracts, and holding that the Virginia statute of May 1, 1888, could effect or impair a contract executed, acknowledged, delivered and duly recorded in the year 1886 between the defendant company and the mortgagee.

14. The court erred in giving said claim and interest thereon the aforesaid priority, and thereby disregarding the Constitution of Virginia, which provides, in Section 15 of Article 5, that no law shall embrace more than one object, which shall be expressed in its title.

15. The court erred in ordering the purchaser to pay to the intervenor the sum of \$154,895.97, the amount of its claim and interest thereon.

16. The court erred in ordering the payment of any interest on said claim.

17. The court erred in not ascertaining the exact amount due by the purchaser on account of diversion, and *pro rating* the same among all the claimants who are found to be entitled thereto.

18. The court erred in not separating the claims of the intervenor and then allowing the benefit of the Virginia Statute only to those claims arising from the supply of iron rails which were used in Virginia, or delivered therein.

19. The court erred in finding that there had been a

diversion of earnings on the case submitted by the pleadings, as there was nothing on the masters' report or exceptions filed which warranted the finding there had been a diversion, as there had been no exception to the masters' failure to report the evidence, and no exception to their finding of facts by the intervenor.

20. The court erred in requiring the purchaser to pay for rails put on the Virginia Midland and other leased railroads; the benefit therefrom accrued directly to the holders of mortgages of said leased roads, who are not parties to this cause, and not to holders of bonds under the mortgage foreclosed herein.

SOUTHERN RAILWAY COMPANY,

Purchaser.

WILLIS B. SMITH, Solicitor.

And on another day, to-wit: on the 10th day of January, 1896, the following order was entered, to-wit:

DECREE ALLOWING APPEAL.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York	}	Consolidated
et al.,			Complainants,
	<i>vs.</i>	
Richmond & Daville Railroad Com-	}	Cause.
pany et als.,			Defendants.

In the matter of the Intervention of the Carnegie Steel Company, Limited.

Comes now the Southern Railway company, purchaser at the foreclosure sale under the final decree in this cause, and files its petition praying an appeal to the United States Circuit Court of Appeals for the Fourth Circuit, from the final order and decree of this court of the 16th December, 1895, in favor of the Carnegie Steel Company, and files its petition for an allowance of appeal, and also files its assignment of errors, and prays the court to fix the penalty of an appeal bond to operate as supersedeas upon the said decree of December 16th, 1895.

Thereupon, the court allows the said appeal, and fixes the penalty of such supersedeas bond in the sum of \$200,000, with Charles H. Coster, of New York city, as surety, which surety is hereby approved by court.

On filing such appeal bond, conditioned according to

law, within twenty days from this date, with surety as above provided, the said decree of 16th December, 1895, shall be stayed and superseded until the determination of such appeal.

NATHAN GOFF,
U. S. Circuit Judge.

SUPERSEDEAS BOND.

Filed January 27th, 1896.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

Central Trust Company of New York and others,	Complainants,	} Consolidated Cause.
against		
The Richmond & Danville Railroad Com- pany and others,	Defendants.	

In the matter of the Intervention of the Carnegie Steel Company, Limited.

Know all men by these presents, That I, Charles H. Coster, of the city, county and State of New York, am held held and firmly bound unto the above named The Carnegie Steel Company, Limited, in the sum of two hundred thousand dollars (\$200,000), to be paid to the said The Carnegie Steel Company, Limited; for the payment of which, well and truly to be made, I bind myself, my heirs, executors and administrators firmly by these presents. Sealed with my seal and dated the fifteenth day of January, 1896.

Whereas, the Southern Railway Company has prosecuted an appeal to the United States Circuit Court of Appeals for the Fourth Circuit, from the final order and decree of this court of the 16th day of December, 1895, herein, in favor of the Carnegie Steel Company, Limited; and whereas, by an order duly made and entered on January 10, 1896, the court has allowed said appeal, and fixed the penalty of the bond to operate as supersedeas upon the said decree in the sum of two hundred thousand dollars (\$200,000), with the said Charles H. Coster, of New York, as surety;

Now, therefore, the condition of this obligation is such that if the above-named Southern Railway Company shall prosecute said appeal to effect, and if it shall fail to make its plea good, shall answer all damages and costs, then this

obligation shall be void ; otherwise the same shall be and remain in full force and virtue.

C. H. COSTER. [Seal.]

STATE OF NEW YORK,)

City and County of New York.) ss :

On the fifteenth day of January, 1896, before me, a notary public, duly commissioned and sworn, personally came and appeared Charles H. Coster, to me known and known to me to be the individual described in and who executed the foregoing bond, and he acknowledged to me that he executed the same as his free and voluntary act and deed.

{ Seal. }

PATRICK A. NOLAN,
Notary Public, Kings County.
Certificate filed in New York County.

CITATION.

UNITED STATES OF AMERICA, ss :

To the Carnegie Steel Company, Limited, a joint stock company under the laws of the State of Pennsylvania—
Greeting :

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Fourth Circuit, to be holden at Richmond on the 10th day of March, 1896 next, pursuant to an appeal from a decree of the Circuit Court of the United States for the Eastern District of Virginia, in your favor passed in a cause in said court wherein the Southern Railway Company are appelland and you are respondents, to show cause, if any there be, why the decree rendered against the said Southern Railway Company, in said cause mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of our Supreme Court, this 11th day of February, in the year of our Lord one thousand eight hundred and ninety-six.

NATHAN GOFF,
Judge U. S. Circuit Court, Fourth Circuit.

Service of within citation on me admitted this 13th day of February, 1896.

NICHOLAS P. BOND,
Solicitor for Carnegie Steel Company, Limited.

CLERK'S CERTIFICATE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

I, M. F. Pleasants, Clerk of the Circuit Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a true transcript of the record in the main case of the Central Trust Company of New York et al. *vs.* the Richmond and Danville Railroad Company et als., as requested by appellant's counsel to be included as a part of the record on appeal in this case; and that the foregoing is a true transcript of all the record and proceedings in the case of the Central Trust Company of New York et al. *vs.* The Richmond and Danville Railroad Company et al., Ex-parte the Carnegie Steel Company, Limited, intervenor.

Seal
of the
Court.

Given under my hand and the seal of said Court at Richmond, in said district, this 25th day of March, 1896.

M. F. PLEASANTS, Clerk.

DEPOSITION OF W. H. GREEN.

CIRCUIT COURT OF THE UNITED STATES, EASTERN
DISTRICT OF VIRGINIA.

Central Trust Company of New York	} In Equity. Consolidated Cause.
<i>vs.</i>	
Richmond & Danville Railroad Company.	
Wm. P. Clyde and others	
<i>vs.</i>	
Richmond & Danville Railroad Company and others.	

Examination of Capt. W. H. GREEN before Messrs. Pleasants and Atkins, Special Masters, in Washington, D. C., March 22nd, 1894.

Present: Mr. Henry Crawford, for the complainants; Mr. N. P. Bond, for the Carnegie Steel Company, Limited; Mr. Hugh L. Bond, Jr., for the receivers.

By Mr. CRAWFORD: Please state your name and residence. A. W. H. Green; residence, Washington, D. C.

Q. Are you officially connected with the Richmond & Danville Railroad? A. I am.

Q. In what capacity? A. General manager.

Q. How long have you been general manager of the system? A. Since February, 1891.

Q. Both under the operation by the corporation, and since that by the receivers, continuously? A. Yes, sir.

Q. Your office is at Washington, now under the receivers? A. Yes, sir.

Q. Do you know anything about a purchase of rails made by the Richmond & Danville Railroad from the Carnegie Steel Company, Limited, in the year 1891? A. Yes, sir.

Q. Have you got separate statements of the rails which, as I understand, were delivered at different periods? A. Yes, sir.

Q. What were the different weights of the rails? A. 56 and 70 pounds to the yard—lineal yard.

Q. How much was the total tonnage of the rails purchased and delivered by Carnegie Bros. & Company, Limited, to the Danville? A. 4,203.2 tons.

Q. How much was the total purchase price of those rails? A. \$125,067.39.

Q. Do you have preserved in your office a record of the particular roads and parts of roads where rails are laid

from time to time? A. Yes, sir; all new rails are laid by my direction on every road in the system.

Q. You keep accurate record of the road, place and track where rails are laid? A. Yes, sir; all rails are distributed and laid in accordance with special instructions from my office, so much in detail as to cover between mile posts.

Q. Be good enough to state for what roads these Carnegie rails were purchased by you, and where laid in track? A. 1,108.5 tons of the 56-pound rail were for the North-eastern Railroad of Georgia; 1,270 tons of the 70-pound rail on the Virginia Midland Railway; 1,793.5 tons of the 70-rail on the Richmond & Danville Railroad; 31.2 tons of the 70-pound rail on the Georgia Pacific Railway double-track, between Atlanta and Peyton, one-half of which was charged to the East Tennessee, Virginia & Georgia.

Q. That distribution makes up the total of 4,203.2 tons? A. Yes, sir.

Q. Were the 1,793.5 tons laid on the R. & D. main line continuously and in one spot? A. I think they were.

Q. About how many miles of continuous main track rail would that make? A. A little over 16 miles of continuous track.

Q. That displaced lighter steel, I presume? A. Yes, sir.

Q. Have you got a statement before you, made up from the records in your office, showing the purchase of these rails and the deliveries, and the particular track where the rails were finally distributed and laid? If so, I will ask you to attach such a statement to your deposition. A. I have, sir, and will give it to you in detail.

By Mr. BOND: The dates in this statement, Captain, are the dates of the delivery of the rails? A. I rather think that those are the dates of the invoices, and the dates just above are the dates of my vouchers.

Q. Since the receivership of the Richmond & Danville Railroad, do you know whether or not reports have been made that certain of these rails have become broken and demand made for their replacement?

(Witness says he will furnish information in regard to this question).

(Captain Green, after refreshing his recollection by an examination of his rail chart, says that the 70-pound Carnegie Steel rail was laid on the Piedmont Railroad, between Danville and Greensboro, except possibly $1\frac{1}{2}$ miles that may have been laid near Richmond on the Richmond

& Danville Railroad, but he is not prepared to state that it was laid continuously).

By Mr. BOND: You do not know then, Captain Green, whether this was laid continuously or not? A. No, sir; I cannot say positively as to that. I am satisfied, however, that it was all laid between Greensboro and Danville on the Piedmont Railroad, except possibly the $1\frac{1}{2}$ miles on the R. & D. near Richmond, before mentioned.

W. H. GREEN.

**STATEMENT OF UNPAID VOUCHERS IN FAVOR OF
CARNEGIE BROTHERS & COMPANY, LIMITED.**

Aug. 1891.—Voucher No. 36.

Jul. 25.	471 0670-2240 tons rails,	\$14,060.57	
27.	563 1710-2240 " "	16,912.90	
28.	73 0860-2240 " "	2,201.52	\$33,174.99

Aug. 1891.—Voucher No. 523.

Aug. 15.	974 2220-2240 tons rails,		29,184.00
----------	---------------------------	--	-----------

Aug. 1891.—Voucher No. 231.

Aug. 14.	302 0580-2240 tons rails,		9,067.77
----------	---------------------------	--	----------

Sep. 1891.—Voucher No. 148.

Aug. 17.	818 0380-2240 tons rails,	\$24,399.25	
19.	370 0010-2240 " "	11,100.13	35,499.38

Sep. 1891.—Voucher No. 149.

Aug. 25.	91 0040-2240 tons rails,		2,730.54
----------	--------------------------	--	----------

Sep. 1891.—Voucher No. 150.

Aug. 20.	19 1240-2240 tons rails,	\$ 586.61	
21.	47 1360-2240 " "	1,428.21	2,014.82

Sep. 1891.—Voucher No. 151.

Aug. 24.	268 0060-2240 tons rails,		8,040.80
----------	---------------------------	--	----------

Nov. 1891.—Voucher No. 304.

Aug. 29.	18 1680-2240 tons rails,	\$ 562.50	
Oct. 9.	136 1700-2240 " "	3,555.73	
Oct. 10.	47 1280-2240 " "	1,236.86	5,355.09

Total

\$125,067.39

LAID AS FOLLOWS.

N. E. R. R. of Ga.	1108.5 tons	56 lb.	\$33,174.99
V. M. Ry.	1270.0 "	70 "	37,713.15
R. & D. R. R.	1793.5 "	70 "	53,258.69
G. P. Ry.	31.2 "	70 "	920.56
			<hr/>
			\$125,067.39

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA, }
 Eastern District of Virginia. }

I, M. F. Pleasants, Clerk of the Circuit Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a true copy of a deposition of Wm. H. Green, which was inadvertently omitted in the record as heretofore certified in the appeal of the Southern Railway Company *vs.* The Carnegie Steel Company, Limited.

{ Seal of }
 { Court. }

In testimony whereof, I have hereunto set my hand and affixed the seal of my said court, in the city of Richmond and district aforesaid, this 27th day of April, A. D. 1896.

M. F. PLEASANTS,
 Clerk.

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT
OF APPEALS, FOURTH CIRCUIT.

No. 165.

Southern Railway Company, Purchaser, Appellant,	} Appeal from the Circuit Court of the United States for the Eastern District of Virginia, Richmond.
<i>vs.</i> Carnegie Steel Company, Limited, Appellee.	

March 28, 1896, Transcript of Record filed and appearances of Henry Crawford and Willis B. Smith, Esqs., entered for the appellant.

April 24, 1896, appearances of B. H. Bristow and Nicholas P. Bond, Esqs., entered for the appellee.

May 13, 1896, (May Term, 1896), the cause came on to be heard on the transcript of the record, and was argued by counsel and submitted.

November 10, 1896, (November Term, 1896) the court announced and filed its opinion, which is as follows, to-wit:

OPINION.

UNITED STATES CIRCUIT COURT OF APPEALS.
FOURTH CIRCUIT.

 No. 165.

The Southern Railway Company,
Purchaser, Appellant,

versus

The Carnegie Steel Company,
Limited, Appellee.

In case of

The Central Trust Company and
others

vs.

The Richmond and Danville Rail-
way Company and others.

} Appeal from the Cir-
cuit Court of the
United States for
the Eastern District
of Virginia, at Rich-
mond.

Before SIMONTON, Circuit Judge, and HUGHES and
MORRIS, District Judges.

[Argued May 13, 1896. Decided November 10, 1896.]

HENRY CRAWFORD and WILLIS B. SMITH for Appellant;
N. P. BOND and B. H. BRISTOW for Appellee.

SIMONTON, Circuit Judge :

This case comes up on an appeal from the decree of the Circuit Court of the United States for the Eastern District of Virginia.

The Richmond and Danville Railroad Company was a corporation created by the laws of the State of Virginia. It became the owner of several other railroads, and the lessee of others, and it created and maintained a great system of railroads traversing several States. The main road, that of the Richmond and Danville, was successful in its management and prosperous to a degree. But the necessity of the system required that many portions of it, which were not productive, should be kept up, although operated at a loss. These were a drain upon and wholly exhausted the surplus received from the better portion of the system. The expenses attending the operation and preservation of the great system were enormous, and it became necessary to reorganize. To this end a bill was filed

by creditors and others (known in this case as Clyde and others *vs.* Richmond and Danville Railroad Company). Previous to the filing of this bill, efforts had been made to formulate and adopt a plan of reorganization which would relieve the situation. But these having failed, and the discovery and adoption of a satisfactory plan of reorganization requiring considerable time, the aid of the court was sought by these creditors and stockholders in order to give adequate protection to the corporation from suits and otherwise, until a satisfactory financial reorganization could be effected. The bill was filed on the 15th day of June, 1892, and F. W. Huidekoper and Reuben Foster were appointed receivers. To this bill the Mortgage Creditors were not parties. The Receivers administered the affairs of the system in their hands from 17th June, 1892, the date of their appointment, to 31st July, 1893. They received from the corporation on their appointment \$480,-427.91 in cash, and collected from accounts due prior to their appointment \$671,000. They received in gross earnings during this receivership \$11,669,789.50. The operating expenses, including taxes, were \$8,371,997.19. The net earnings were \$3,297,792.31. Out of this they paid large sums for construction on the main road, the Richmond and Danville, and for construction work on leased and owned lines, and for equipment. They also paid expenses incurred prior to the receivership, judgments against parts of the system, on rentals, dividends, car trusts, and interest on mortgage bonds.

On 17th day of July, 1893, the Central Trust Company, a mortgage creditor of the Richmond and Danville Railroad, filed its bill for foreclosure of mortgage, and under that bill Samuel Spencer, F. W. Huidekoper and Reuben Foster were appointed receivers, and were put in possession of the property theretofore in charge of the former receivers, who were finally discharged 31st July, 1893. On their discharge they turned over to their successors in cash \$141,325.19.

The Carnegie Steel Company (limited), appellees here, filed a claim against the Richmond and Danville Railroad Company in each of these cases. The claim was first filed October 4th, 1892, with the special masters appointed in the first named case. After the foreclosure suit was filed this company, on 12th February, 1894, upon its petition was permitted to intervene in that suit, both suits being then consolidated, and on 1st March, 1894, it filed another petition setting forth at large its claim.

The Carnegie Steel Company, Limited, holds five notes of the Richmond and Danville Railroad Company,

dated as follows: March 21st, 1892; March 24th, 1892; April 4th, 1892; May 16th, 1892, each payable in three months from their dates, respectively. And one dated 7th June, 1892, at four months. The total principal is \$125,067.39. The origin of these notes was as follows: On 10th June, 1891, the Carnegie Steel Company made a contract with the Railroad Company to deliver certain steel rails on board cars at Bessemer, Pennsylvania, at \$30 gross per ton, payable in notes at four months from date of shipment without interest, with the privilege of renewal of such notes for three months, with interest on renewal at five per cent. per annum, and with the further privilege of a second renewal, with interest at six per cent. per annum. The rails were all delivered at intervals between 25th of July, 1891, and 10th of October, in the same year, and notes given therefor. The notes, according to contract, were renewed, and did not mature until after the appointment of the receivers in the Clyde case.

The Carnegie Steel Company sought payment of its claims as having an equity superior to that of the mortgage debt, under the principles governing this court in the administration of assets in the hands of railroad receivers, and also as entitled to a preference under Section 2485 of the Code of Virginia. The demand was made upon the purchaser, who, under the terms of the order of sale, is responsible therefor if the contention of the Steel Company is sustained.

The Circuit Court sustained the claim, and gave the Carnegie Steel Company a decree for the principal sum thereof, with interest. Errors were assigned as to this action of the court, and the case has been heard on the assignments of error.

SIMONTON, Circuit Judge:

It is manifest that the two bills, that of Clyde and others, stockholders and creditors, and that of the Central Trust Company, a mortgage creditor, were intended to serve one purpose. Both looked to a satisfactory financial reorganization of the Richmond and Danville system. The first was filed to secure the protection of the court until such time as such financial reorganization could be perfected. The second was filed to carry out the financial reorganization which was then perfected. They can be treated as one proceeding, the one being the necessary consequence of and part of the other.

When the receivers were appointed in the second case, and were directed to take charge of the property theretofore in the hands of the receivers appointed in the first

case, the court provided: "Nothing in this order contained shall be construed to vacate any of the orders heretofore entered in the case of Wm. P. Clyde and others. But the court reserves full power to act upon the masters' reports filed in the said cause, and in said cause to adjudge and decree upon the rights of creditors asserting a claim against the property of the said Railroad Company, or income thereof, in preference to the mortgage debt thereof, by orders to be entered in the said suit of Wm. P. Clyde and others, upon notice to parties with like effect upon the mortgage property and income as if the orders were entered in this cause." When the Central Trust Company filed its bill, praying the appointment of receivers, it submitted its rights as mortgagee to these conditions. (*New England R. R. Co. vs. Carnegie Steel Co.*, C. C. A., 1st Circuit, 75 Fed. Rep., 59).

Fosdick vs. Schall, and the long line of cases following it, elucidating and applying the principles there first laid down, have established this doctrine: Railroad property is a matter of public concern. The franchises necessary to their creation and operation involve, in great extent, the rights and interests of the public, and these rights and interests must be preserved. To do this, the railroad must be kept a going concern. In order to construct a railroad, two parties must concur—the capitalists, who put in the money and the work, and the sovereign power which contributes the franchises, especially that of eminent domain. Without the money and without these franchises the road cannot be built. The consideration which moves the sovereign to grant these franchises is the public use of the road when built, that it remain of use, that it be and remain a going concern. To this end, the first application of its earnings must be made. The stockholders subscribe, and the bondholders lend their money with knowledge of this. Neither of them can get anything until the current expenses are paid. Upon this assurance, all persons who furnish labor or supplies to a railroad corporation are encouraged to give it credit, and to contribute to keep it a going concern. If, through inadvertence, or by intention, or from any other cause, any portion of the earnings have been applied to interest or dividends, or to the permanent improvement of or addition to the property, leaving unpaid debts incurred for things necessary to keep it a going concern, this is a diversion which the court, whilst aiding the mortgage creditor, will first correct. *Fosdick vs. Schall*, 99 U. S., 235; *Miltenberger vs. Railway Co.*, 106 U. S., 286; *Trust Co. vs. Souther*, 107 U. S., 591; *Burham vs. Bowen*,

111 U. S., 776; *Kneeland vs. Brass Foundry Works*, 140 U. S., 596; *Finance Co. vs. Charleston, C. & C. R. R. Co.*, 48 Fed. Rep., 188.

And it makes no difference if the person furnishing supplies allows his claim to remain an open account, or prefers to close it with a note or acceptance giving extended credit. Nor is it any waiver of the right to renew the paper at maturity. (*Burnham vs. Bowen*, 111 U. S., 776).

The rule is stated by Waite, Ch. J., in *Burnham vs. Bowen*, *supra* (111 U. S., 780-1). "Every railroad mortgagee in accepting his security impliedly agrees that the current debts made in the ordinary course of business shall be paid from the current receipts before he has any claim on the income. Such being the case, when a Court of Chancery, in enforcing the rights of mortgage creditors, takes possession of a mortgaged railroad and thus deprives the company of the power of receiving any further earnings, it ought to do what the company would have been bound to do if it had remained in possession, that is to say, pay out of what it receives from earnings, all the debts which in equity and good conscience, considering the character of the business, are chargeable upon such earnings. In other words, what may properly be termed the debts of the income should be paid from the income, before it is applied in any way to the use of the mortgagees. The business of a railroad should be treated by a Court of Equity under such circumstances as a 'going concern,' not not to be embarrassed by any unnecessary interference with the relations of those who are engaged in or affected by it.

"In the present case, as we have seen, the debt of Bowen was for current expenses and payable out of current earnings. It does not appear from anything in the case that there was any other liability on account of current expenses unprovided for when the receiver took possession, and there is nothing whatever to indicate that this debt would not have been paid at maturity from the earnings, if the court had not interfered at the instance of the trustees for the protection of the mortgage creditors."

If this be the law when a receiver is appointed at the instance of mortgagees, how much stronger is the equity when the receiver is appointed at the instance of stockholders, to secure uninterrupted opportunity for a satisfactory reorganization.

The question is as to the application of those principles to the case at bar.

There can be no question that the steel rails furnished by the Carnegie Steel Company come within the class of supplies necessary to keep the railroad company a going concern. And the evidence establishes the fact that after incurring the debt the railroad company was in the receipt of large earnings, which were applied to permanent improvements, rentals and interest on the mortgage debt. That the receivers who, under the Clyde bill, took possession of the property, earned large income which was applied in the same way, leaving this debt unpaid. And that when these receivers were discharged they showed in their accounts a cash surplus, which was duly paid over to their successors under the Central Trust Company bill.

The original contract of purchase of the rails was on 10th June, 1891, deliveries were made under it between 25th July and 10th October, 1891. The price was represented by notes, with privilege of renewal. This privilege was exercised. Before the notes matured, the Clyde bill was filed and receivers appointed. The notes fell due. The exact dates are these. The receivers were appointed 15th June, 1892. The first note matured 24th June, the second 27th June, the third 7th July, the fourth 19th August, the last 10th September, 1892.

The supplies were furnished between July and October, 1891, the first of them nearly eleven months, the last a few days more than nine months before the appointment of receivers in the Clyde case. In the cases in the Supreme Court and on Circuit, in which this consideration for the claims of supply creditors is discussed, it is called an Equity. The only qualification in applying the Equity, when the facts call for its exercise, is that the claim has arisen within a reasonable time before the receiver was appointed. No fixed definition of a reasonable time has been adopted.

In *Thomas vs. Railway Co.*, 36 Fed. Rep., 817, six months was made the limit of a reasonable time. In *Mellenberger vs. Railway Co.*, 106 U. S., 288, ninety days was the limit adopted. In *Burnham vs. Bowen*, 111 U. S., *supra*, the supplies were furnished sometime in 1874, when, does not appear, and the receiver was appointed early in 1875. In *Bound vs. South Carolina R'y*, 8 U. S., Appeals, 472, eighteen months was considered too long a period. See also *No. Pac. R. R. Co. v. Lamont*, 32 U. S. Appeals L., 483.

Mr. Justice Brewer, whose ability and large experience on this subject give his opinions great weight, in *Blair vs. Railway Co.*, 22 Fed. Rep., 474, says: "The idea which underlies these principles I take to be this: That

the management of a large business, like that of a railroad company, cannot be conducted on a cash basis. The temporary credit, in the nature of things, is indispensable. Its employees cannot be paid every month. It cannot settle with other roads, its traffic balances at the close of every day. Time to adjust and settle these various matters is indispensable. Because, in the nature of things, this is so, such temporary credits must be taken as assented to by the mortgagees. * * * In this view, such temporary credits accruing prior to the appointment of the receiver must be recognized by the mortgagees and such claims preferred. Now, for what time prior to the appointment of a receiver may these credits be sustained? There is no arbitrary time prescribed, and it should be only such reasonable time as, in the nature of things and in the ordinary course of business, would be sufficient to have such claim settled and paid. Six months is the longest time I have noticed as yet given. Ordinarily, I think that is ample. Perhaps, in some large concerns, with extensive lines of road and a complicated business, a longer time might be necessary."

It is evident that, in determining what is a reasonable time, regard must be had to the special circumstances of each particular case. No hard and fast rule can be adopted, nor any line of demarkation clearly made. "What is a reasonable time is a question of law depending upon the circumstances of the particular case." (*Payne vs. Central Vermont R. R. Co.*, 118 U. S., 160; *Morgan vs. The United States*, 113 U. S., 477.)

In the present case, the Carnegie Company was dealing with the Richmond and Danville Company. This road controlled an enormous system of railroads, and was in the enjoyment of a very large revenue. There can be no doubt that if the system had been continued these rails could have been paid for out of the earnings. Demand for rails was constant. And it was the highest interest of the Railroad Company to keep up its credit with the Carnegie Company. The system, however, had become too extended, and needed reorganization. Those interested in it as stockholders and owners attempted plans of reorganization, but did not get the unanimity necessary to perfect them. They sought the aid of the court, and asked its protection from creditors until such time as a scheme of reorganization could be completed and adopted. Their prayer was granted and the receivers appointed. This whole action was for the advantage of those who owned or were interested in the property of the Railroad Company, for their advantage primarily and princi-

pally, if not for their advantage solely. But for this intervention in behalf of these stockholders and creditors, their taking the property out of the hands of the company and sequestrating it for their own purposes, it must be presumed that the notes of the Carnegie Company would have been met at maturity. At the least it can be said, in the language of *Burnham vs. Bowen* (page 781), "there is nothing whatever to indicate that this debt would not have been paid at maturity from the earnings if the court had not interfered" at the instance of these stockholders. The mortgage creditor obtained the appointment of receivers in his bill on the express condition that the rights of creditors under the Clyde bill should be conserved. And as that bill deprived the company of the power of receiving any further earnings, the court which appointed the receiver, should require that to be done which "the company would have been bound to do if it had remained in possession, that is to say, pay out of what is received from earnings all the debts which, in equity and good conscience, considering the character of the business, are chargeable on the earnings."

Has the Carnegie Steel Company lost its claim by laches? In the transaction with the Railroad Company the rails were to be paid for with notes, maturing at no long date. This was for the advantage of the Railroad Company, distributing the payments, and making more easy the burden on the earnings. The paper was renewed according to the original contract of sale. This, as been seen, is no waiver. Before the paper matured, the receivers took it out of the power of the company to meet the paper. As soon as it matured the claim was made. The Carnegie Company did not sleep on its rights. It must be borne in mind that the Clyde bill was not the action of creditors of a corporation struggling to keep from bankruptcy, driven by creditors, after a long period of shaking credit. It was a plan adopted by the owners of the property to secure perfect organization and avowedly to prevent creditors from disturbing inchoate plans to this end. The movement was conceived by the debtor company. They took their own time in applying to the court, and "the sudden action of the court left this debt unpaid." (*Bound vs. So. Ca. Ry. Co.*, 8 U. S. Appeals, 472.) This case has been relied upon as settling a rule adverse to the claimant. In *Bound vs. So. Ca. Railway Company*, the Lackawanna Company furnished Steel rails and took notes therefor, eighteen months before the appointment of a receiver. These notes were payable out of earnings by the terms of the notes. Three months after the date of the

notes, and five months before their maturity, interest on the second mortgage bonds of the Railway Company was paid. No other diversion of income was proved or appeared in the case. By taking the notes at eight months, the Lackawanna Company was held to have assented to the use of the earnings during this period for payment of interest. This defeated their claim.

The question can be considered from another standpoint. There can be no question that, notwithstanding the terms of the mortgage, the mortgagee cannot require an account of the earnings, tolls and income from the mortgagor, until he has made demand therefor or for a surrender of possession under the provisions of the mortgage. *Sage vs. Memphis, &c., R. R. Co.*, 125 U. S., 378, and cases quoted. When, therefore, the receivers appointed at the instance of stockholders and creditors took possession, they enjoyed the same right to the earnings and income which the Railroad Company enjoyed, and rightfully received them. As the Railroad Company would have been bound to use this income in the payment of the current expenses for labor and supplies, the receivers should have done so also. But, instead of this, receivers diverted the earnings, income and funds in their hands toward the betterment of the property, permanent improvements and additions to it, and in payment of interest. And this was natural. They were appointed to take possession of the property and to conserve it until a plan of reorganization could be adopted and perfected. To facilitate this plan, the property must be kept up. To this end the funds coming from earnings were used. When the purpose of the first receivership was accomplished, the mortgage creditors came in and reaped the benefit. Surely those creditors whose claims were neglected, and from whom the earnings were diverted, have the right to ask and receive at the hands of the court the recognition and preservation of their claims.

We see no error in the conclusion of the Circuit Court on this point. This renders unnecessary any discussion as to the force and effect of the Virginia statute. On that we express no opinion. The decree of that court is affirmed, with costs.

MORRIS, District Judge, concurring:

If it be conceded that the claim of the Carnegie Steel Company has no statute lien superior to the mortgage of October 22, 1886, because the statute was passed after the date of the execution and recording of the mortgage, and that the debt having been contracted more than six months

before the appointment of the receivers does not come within the rule which might permit it to be paid out of the proceeds of the corpus of the mortgaged railroad property, there still remains to be considered whether there is any other ground of equity which entitles the claim to payment out of any fund under the control of the court.

If, after the appointment of the receivers under the creditors' bill, there came into their hands earnings which were expended for the betterment of the mortgaged property instead of being applied to the payment of debts for current supplies contracted within a reasonable time before the receivership, then as against the mortgaged bondholders so benefited the supply creditor has an equity to have those earnings restored and applied to his debt.

In *Burnham vs. Bowen*, 111 U. S., 782, the Supreme Court said: "We think the debt was a charge in equity on the continuing income, as well as that which came into the hands of the court after the receiver was appointed as that before. When, therefore, the court took the earnings of the receivership and applied them to the payment of the fixed charges on the railroad structures, thus increasing the security of the bondholders at the expense of the labor and supply creditors, there was such a diversion of, what is denominated in *Fosdick vs. Schall*, the current debt fund as to make it proper to require the mortgagees to pay it back. But it is further insisted that even though the court did err in using the income of the receivership to pay the fixed prior charges on the mortgaged property and thus increase the security of the bondholders, there is no power now to order a sale of the property in the hands of the trustees to pay back what had thus been diverted. In *Fosdick vs. Schall*, page 254, it was said that if in a decree of foreclosure a sale is ordered to pay the mortgage debt, provision may be made for a restoration from the proceeds of sale of the fund which has been diverted, and this clearly because, in equity, the diversion created a charge on the property for whose benefit it had been made."

The facts of the present case suggest even a stronger equity in favor of the intervenor than existed in the case of *Burnham vs. Bowen*. The original bill filed by Clyde and others, who were creditors and stockholders, was professedly for the purpose of protecting the Richmond & Danville Railroad Company and its system, comprising twenty-six other railroads in six different States, from disruption from the efforts of creditors to enforce their debts. The court was asked to preserve its unity and to prevent the ruinous sacrifice which would result from a severance of the system. The trustee of these bondholders was not

made a party, but within a few days after the filing of the bill the trustee was notified of applications for authority to use the income to pay maturing car trust instalments and rental obligations, and was represented by counsel, and did not object, and two months later the trustee was, on its own motion, made a party to the case.

One year later the trustee filed its bill to foreclosure the mortgage of October 22, 1886, under which the sale was decreed. This mortgage covered, not only the Richmond & Danville Railroad proper, as to which it was a third mortgage, but also the interest of the Richmond & Danville Railroad Company in some twenty other railroad lines. These interests, consisting of leases, contracts for operating and mortgage bonds, were part of the property sold under the decree of foreclosure. In the prayer for relief in the bill for foreclosure the court is asked to appoint receivers with power to operate the Richmond & Danville Railroad and "the railroads owned and leased or controlled by it, and with all such power as may be requisite to preserve said property until sale thereof."

It is obvious that the preservation of the unity of the system of railroads which was operated by the Richmond and Danville Railroad Company, and the sale of all those covered by this mortgage without any disruption of the system was part of the relief prayed by the mortgagee's bill, as it had been by the original creditors' bill with which it was presently consolidated. How was the system to be preserved from disruption and brought to a sale as a unit except by using the current earnings of the receivers to pay the rentals and contract obligations necessary to prevent forfeitures of the leased and controlled railroads and the payment of the prior fixed charges of the Richmond & Danville Railroad proper?

On the appointment of the Clyde receivers, June 16, 1892, there was paid over to them the cash then in the treasury of the corporation amounting to \$480,427.91, and they received sums earned prior to their appointment amounting to \$671,363.40. These two sums, amounting to \$1,151,791.31, very nearly paid all the current operating debts contracted within six months, which by order of court they were directed to pay. The deficit did not amount to as much as \$100,000.

From June 17, 1892, to July 31, 1893, when the Clyde receivers were discharged and the mortgagee's receivers took possession, the Clyde receivers had received:

Gross earnings,	\$11,669,789.50
Operating expenses, including taxes,	8,371,997.19
Net earnings,	<u>\$ 3,297,792.31</u>

Out of this large sum they expended under orders of court about \$500,000.00 for construction and equipment; they made car trusts payments amounting to over \$200,000.00, and the remaining two and a half millions they paid away for interest, rentals and dividends, including about \$400,000.00 for interest on the two prior Richmond & Danville mortgages. These payments of interest, rentals and dividends on the roads operated by the Richmond & Danville Railroad Company were in very large part on those covered by the foreclosed mortgage and were paid to prevent forfeitures and preserve the unity of the system. They were made upon orders of court passed without objection after notice to the trustee of the bondholders.

The Clyde receivers, when they were discharged, handed over to the new receivers appointed under the mortgagee's bill, in cash \$141,325.19, and supplies and materials purchased by them to a large amount. It is urged that there was no net earnings because on the whole operation of the system there was a deficit, but the fact is that there was a gain of \$346,163.10 from the operation of the Richmond & Danville Railroad proper, and the deficit resulted from the operation of other lines of the system which were covered by the mortgage and which were held and operated by the receivers and kept from forfeiture, primarily to preserve the security of the foreclosed mortgage. This was also the policy of the receivers appointed at the instance of the mortgagees, who operated the system from August 1, 1893, to July 1, 1894, pursuing precisely the same policy as the Clyde receivers. The Clyde bill was not a mortgagee's bill but was filed by the stockholders and creditors, with the assent of the corporation, to preserve the system until its financial difficulties could be adjusted. When receivers are appointed under such a bill, it would seem to be peculiarly a case in which the court should use the income of the receivership in the way in which the corporation itself would have been bound to use it, that is to say, to pay current supply debts contracted within a reasonable time in preference to new construction and equipment expenses, and even in preference to expenditures to prevent forfeitures of subordinate lines.

New England Co. vs. Carnegie Steel Co., 75 Fed. Rep., 54.

Scott vs. Farmers Loan & Trust Co., 32 U. S. App., 468-480, 69 Fed. Rep., 17-23.

The pleadings in both the Clyde case and the mortgagee's case from the beginning to the end disclose that the proceedings in court were in aid of the undertaking to adjust the complex financial burdens of the Richmond

& Danville system comprising over three thousand miles of railroads. It further appears that the reorganization was effected through the sale under the foreclosed mortgage to the Southern Railway Company, and that in the reorganization the bondholders under the foreclosed mortgage were secured by a new mortgage on the whole system. It is a case, therefore, which does not suggest harsh treatment of the Richmond & Danville supply creditors in the interest of the bondholders of the foreclosed mortgage.

This appeal does not raise the question of a supply creditor seeking to be paid out of the corpus of a mortgaged property and who is compelled, before he is allowed to displace a prior recorded mortgage, to bring himself strictly within the limitations to that equity; but this is a supply creditor seeking to be paid out of the earnings which came to the receivers after his debt matured and which were diverted by them, without opposition from the mortgagee, to expenditures which directly resulted in preserving the mortgaged property, which earnings, if the receivers had not been appointed, there is no ground for supposing would not have been applied by the company to the payment of the supply creditor's debt.

The case of *Bound vs. South Carolina Railway Company*, 58 Fed. Rep., 473, was from the beginning a bondholders' foreclosure suit. There was no proof of earnings by the receiver diverted from supply creditors; it was an effort by an intervening supply creditor, who had furnished rails eighteen months before the receiver was appointed, to obtain priority over the mortgage and be paid out of the proceeds of a sale of the corpus of the railroad. The ruling in that case was that the claim was in point of time beyond the limit to which supply creditors who might claim to be paid in preference to mortgage bondholders must be restricted, and that as to the diversion of earnings prior to the receivership the creditor had waived it by his agreement at the time of the purchase to give credit and take notes, postponing payment of its claim beyond the due day of the mortgage interest paid.

In the present case we think that earnings of the receivers under the Clyde bill are shown to have been used for the benefit of the bondholders which should have been applied to the payment of the Carnegie Steel Company's supply claim, and that under the terms of the decree of foreclosure the purchaser was rightly required by the Circuit Court to pay the claim. But I do not think interest should be allowed. *Thomas v. Western Car Co.*, 149 U. S., 95-116. The delay has not been the fault of either the bondholders or the purchaser.

At the same term, to-wit: November 16, 1896, the court here made and entered the following decree, to-wit:

DECREE.

UNITED STATES CIRCUIT COURT OF APPEALS.

FOURTH CIRCUIT.

No. 165.

Southern Railway Company, Pur- chaser, Appellant, <i>vs.</i> Carnegie Steel Company, Limited, Appellee.	}	Appeal from the Cir- cuit Court of the United States for the Eastern Dis- trict of Virginia.
---	---	--

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Virginia, and was argued by consent.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said Circuit Court, in this cause, be, and the same is hereby affirmed with interest and costs; interest until paid at the same rate per annum that similar decrees bear in the Courts of the State of Virginia. It is further ordered that the mandate of this court issue after the expiration of twenty days from the date hereof.

CHARLES H. SIMONTON,

November 16, 1896.

Circuit Judge.

PETITION AND ORDER TO STAY MANDATE.

Filed Dec. 1, 1896.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOURTH CIRCUIT.

No. 165.

The Southern Railway Company,
Purchaser, Appellant,*vs.*The Carnegie Steel Company,
Limited, Appellee.

In case of

The Central Trust Company and
others,*vs.*The Richmond and Danville Rail-
way Company and others.

} Consolidated Cause.

To the Honorable Judges of the Circuit Court of Appeals
of the United States, Fourth Circuit :

The Southern Railway Company, purchaser, appellant in the above styled cause, respectfully shows that its counsel has ordered a copy of the record in this cause, and intends upon the receipt of the record to apply to the Supreme Court of the United States to grant a certiorari from the decree of affirmance. In view of the fact that the twenty days, allowed by the decree before mandate can issue, will expire on December 6th, before the Supreme Court can possibly act upon the application,

Your petitioner prays that an order may be granted extending the issue of the mandate for an additional twenty days.

SOUTHERN RAILWAY COMPANY,

By Counsel.

WILLIS B. SMITH,

Solicitor.

Let the mandate be withheld for twenty days further.

CHARLES H. SIMONTON,

Circuit Judge.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA.

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the entire record in the therein entitled cause as the same remains upon the files and records of the said Circuit Court of Appeals.



In testimony whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, this 4th day of December, A. D., 1896.

HENRY T. MELONEY,
Clerk U. S. Ct. Ct. Appeals, 4th Ct.

**COMPLAINANTS' EXHIBIT NO. I, MENTIONED ON PAGE 367
IN PETITION OF CARNEGIE STEEL COMPANY,
LIMITED, WHICH WAS FILED WITH AND
ATTACHED TO THE CERTIFIED
RECORD AS A SEPARATE
PAMPHLET.**

**PLAN AND AGREEMENT FOR THE
REORGANIZATION
OF THE
RICHMOND AND WEST POINT TERMINAL RAIL-
WAY AND WAREHOUSE COMPANY,
RICHMOND AND DANVILLE RAILROAD COMPANY
AND SYSTEM,
EAST TENNESSEE, VIRGINIA AND GEORGIA
RAILWAY COMPANY AND SYSTEM.**

DATED MAY 1ST, 1893.

DREXEL, MORGAN & CO.,
Depositories,
23 Wall Street,
New York City.

C. H. COSTER,
GEORGE SHERMAN,
ANTHONY J. THOMAS,

} Reorganization
Committee.

BANGS, STETSON, TRACY & MAC VEAGH,
Counsel to the Committee.
CENTRAL TRUST COMPANY OF NEW YORK,
Custodian of Securities.

INDEX.

	Original.	Printed.
PRESENT SITUATION :		
I. Outstanding stock and obligations.....	3	507
II. Matters to be considered in the reor- ganization.....	4	598
PRELIMINARY CONDITIONS OF PARTICIPATION		
UNDER THE PLAN.....	8	512
PLAN OF REORGANIZATION (with explanations) :		
THE NEW RAILROAD COMPANY.		
I. What it is to acquire and gen- eral basis of the reorganization.	9	513
II. New stocks and bonds.....	11	516
III. Use of the new stocks and bonds.	13	518
THE RICHMOND & WEST POINT TERMINAL		
RAILWAY & WAREHOUSE COMPANY.		
IV. Adjustment of the Terminal securities.....	15	521
V. Reasons for adjustment of Ter- minal securities.....	15	522
THE RICHMOND AND DANVILLE RAILROAD		
SYSTEM AND EAST TENNESSEE, VIRGINIA		
& GEORGIA RAILROAD SYSTEM.		
VI. List of undisturbed securities....	18	525
VII. List of readjusted securities and basis of readjustment.....	20	526
VIII. General theory of the readjust- ment.....	23	530
IX. Detailed explanation of the read- justment.....	23	530
THE FINANCIAL FEATURES OF THE REOR-		
GANIZATION.		
X. Cash provision and Syndicate....	35	544
XI. Estimate of net earnings, fixed charges and outstanding capi- talization of the New Company	36	545
XII. Comparison of Present and Pro- posed indebtedness.....	37	547
THE NECESSITY FOR, AND BENEFITS FROM,		
THOROUGH REORGANIZATION.....	38	547
REORGANIZATION AGREEMENT.....	43	553

(3)

PRESENT SITUATION.**I.****Outstanding Stock and Obligations.****(a)**

The Richmond and West Point Terminal Railway and Warehouse Company has the following stock and obligations outstanding in the hands of the public :

Collateral Trust 6 per cent. Bonds.....	\$ 5,500,000
“ “ 5 “ “ “	10,679,000
Capital Stock, Preferred.....	5,000,000
“ “ Common	70,000,000
Guaranty on Bonds of East Tennessee System..	6,000,000
Floating Debt (net) on January 1st, 1893, about.....	†100,000

(b)

The Richmond and Danville Railroad Company and its subordinate companies have bonds and guaranteed stocks outstanding in the hands of the public (exclusive of \$3,316,000 Income Bonds, and of securities pledged for floating debt).....	66,792,000
The Richmond and Danville Railroad Company has stock outstanding (nearly all owned by Richmond Terminal).....	5,000,000
Is joint maker with the East Tennessee of “Cincinnati Extension,” issue of East Tennessee bonds (this item is also included in statement of East Tennessee bonds below)....	6,000,000
Is joint guarantor with the Central R. R. & B. Co. of Georgia, of Macon and Northern Bonds.....	2,200,000
Has Floating Debt, Receivers' obligations and accrued interest on funded debt (net) on January 1st, 1893, about.....	*7,000,000

(c)

The East Tennessee, Virginia and Georgia Railway Company and its subordinate companies have bonds and other obligations outstanding in the hands of the public (exclusive of \$44,

† Does not include interest in default on bonds.

* Exclusive of claims in dispute with Central R. R. and Banking Co. of Georgia, and also of other items which will adjust themselves through the reorganization.

725 Income Bonds, and of securities pledged for floating debt).....	55,776,000
Equipment Notes.....	1,300,000
Floating Debt and Receivers' obligations (net) on January 1st, 1893, about.....	3,000,000

The East Tennessee, Virginia and Georgia Railway Company has :

Capital Stock, First Preferred.....	\$11,000,000
Second Preferred.....	18,500,000
Common.....	27,500,000
Of this Capital Stock the Richmond Terminal Co. owns :	
First Preferred.....	\$8,783,200
Second Preferred.....	6,536,000
Common.....	5,880,000

(4)

II.

Matters to Be Considered in the Reorganization.

(a)

The matters at present to be considered in the reorganization are :

Terminal Company bonds.....	\$16,179,000
Richmond and Danville bonds (including sub- ordinate companies and the Macon & North- ern).....	68,992,000
East Tennessee bonds (including subordinate companies).....	55,776,000
East Tennessee Equipment Notes (including subordinate companies).....	1,300,000
Floating Debts.....	10,100,000
Terminal Company Preferred Stock	5,000,000
Common Stock.	70,000,000

And :

East Tennessee Stocks not held by Terminal Co., viz. :

First Preferred Stock.....	\$ 2,216,800
Second Preferred Stock.....	11,964,000
Common Stock.....	21,620,000

And provision for immediate construction needs and future requirements for development of the system.

Without ample provision for both present and future, no reorganization of these systems can be permanently successful.

One obvious trouble with them is that their maintenance and repairs have been neglected. Another is that, while nearly all the lines in the United States have been steadily substituting solid roadbeds, heavy equipment and other modern facilities, for the light and inefficient appliances formerly in use, these lines, because of the constant drains to which they were subjected from the obligations assumed, and from the necessities of the Terminal Company for the payment to it, as dividends, of every available dollar with which to meet its own obligations, have not been in a financial condition to keep up to the times in this respect, and now they find themselves so far behind as to be, to a considerable extent, unqualified to handle business with economy, or to compete successfully with other lines.

While in a general way, the *main lines* of the Richmond and Danville (West Point and Alexandria to Atlanta) are in fair condition—better than those of the East Tennessee, excepting parts of its main line between Bristol and Chattanooga, the Cincinnati, New Orleans and Texas Pacific and the Alabama Great Southern.—nearly all the rail in both systems is too light (50 to 60 lbs., while, on the main lines, it should be 70 to 75 lbs.), many of the trestles (5) need renewing, and a large number of the bridges, principally on the East Tennessee system, are not sufficiently strong to warrant the use of heavy engines, which are essential to haul long trains and operate with economy. To a very large extent, ballast is either altogether lacking or insufficient in quantity. Excepting that portion of the equipment represented by equipment bonds or notes, the engines and cars are generally small and weak and unsuitable for main line service, and are also insufficient in quantity for any considerable enlargement of business.* Other

* On the entire Richmond and Danville system, the equipment not covered by equipment trusts consists of 185 locomotives, 251 passenger-service cars, 3,486 freight cars—all valued, by the Receivers, upon their appointment, at \$2,040,000, or say about \$3,500 per locomotive, about \$2,100 per passenger car, and about \$250 per freight car. The equipment covered by equipment trusts consists of 208 locomotives, 83 passenger cars, 6,781 freight cars—valued by them at \$4,822,000, or say about \$7,100 per locomotive, about \$3,850 per passenger car, and about \$140 per freight car—against which about \$4,500,000 equipment bonds are outstanding sold or pledged.

Similar details for the East Tennessee System are lacking, but an equally good idea of the situation there may be gathered from the following :

ENGINES.

East Tennessee, Virginia and Georgia proper has 226 engines, of which 102 are from 2 to 7 years old ; 86 are from 9 to 14 years old ; 38 are from 16 to 38 years old.

Knoxville and Ohio has 11 engines, none of which are over 6 years old.

Mobile and Birmingham has 11 engines, of which 1 is 12 years old ; 4 are 13 years old ; 1 is 21 years old ; 4 are 22 years old ; 1 is 33 years old.

Memphis and Charleston has 42 engines, of which 2 are 3 years old ; 31 are 8 to 11 years old ; 3 are 12 to 16 years old ; 4 are 22 years old ; 2 are 32 years old.

Louisville Southern has 25 engines, all modern.

Cincinnati, New Orleans and Texas Pacific has 103 engines, of which 70 are 1 to 10 years old (average about 6 years) ; 33 are 11 to 16 years old.

Alabama Great Southern has 61 engines, of which 47 are 1 to 10 years old (average about 5 years) ; 12 are 11 to 22 years old ; 2 are of unknown age.

FREIGHT CARS.

East Tennessee proper has 7,500 cars, of which 500 are 60,000 lbs., and are covered by car

appointments, such as shops, yards, etc., are, with but few exceptions, crude and uneconomical.

On the branches and secondary lines, especially those of the Richmond and Danville system—the condition is even worse, little or no effort having been made to maintain them at proper standard, even for a moderate traffic. About 700 miles of the Richmond and Danville secondary lines and branches (including about 200 miles of narrow-gauge lines) are still laid with *iron rails*. On July 1st, 1892, there were 72 miles of iron rail in the *main* lines of the East Tennessee.

An expenditure of several million dollars should be promptly made on these properties for equipment alone, but it is no use to do so, even if it were possible, unless additional track and yard facilities are also provided, nor unless such enlargement of engine and car shops be made as will permit of the equipment being kept in order. All these matters are interdependent and must all be considered in the reorganization.

An examination demonstrates that the high rates of freight which these lines have, until recently, obtained, have enabled them to show a fair percentage of net revenue; but these more or less artificial conditions no longer exist and will not return. Competitive lines, and especially the necessity of laying down agricultural, mineral and manufactured products at a low cost in distant markets, have very greatly reduced freight rates in the South in the last three years, and it is useless to expect that they can ever

trust. Of the remainder, 4,200 are 50,000 lbs. capacity, and 3,100 are described as "under 50,000 lbs.," and as varying "in age from 7 to 15 or 20 years." The East Tennessee, Virginia and Georgia also leases about 1,700 cars of 60,000 lbs. capacity.

Knoxville and Ohio owns 378 cars, of which 125 are 60,000 lbs. capacity; 225 are 50,000 lbs. capacity, and the remainder under 50,000 lbs. capacity.

Mobile and Birmingham has less than 100 cars, all of capacity "under 50,000 lbs."

Memphis and Charleston has 1,191 cars, of which 241 are on car trust. About 200 are of 50,000 lbs. capacity; the others are described as "under 50,000 lbs." capacity, which, in itself, would indicate that they are old cars.

Louisville and Southern owns 754 cars, of which 404 of 60,000 lbs. capacity are on car trusts. The others are of only 40,000 lbs. capacity.

Alabama Great Southern owns 3,653 cars, of which 600 of 60,000 lbs., and 600 of 40,000 lbs. capacity, are covered by car trusts. Of the remainder, 2,250 are 40,000 lbs.; 75 are 30,000 lbs., and 109 are under 30,000 lbs.

Cincinnati, New Orleans and Texas Pacific owns 3,530 cars, of which 300 of 60,000 lbs., and 190 of 40,000 lbs. are under car trusts. Of the remainder, 831 are 40,000 lbs., 922 are 30,000 lbs., 1,101 are 30,000 lbs., 423 are under 30,000 lbs.

PASSENGER SERVICE CARS.

East Tennessee proper, 150 cars; Knoxville and Ohio, 1 car; Mobile and Birmingham, 9 cars; Memphis and Charleston, 42 cars; Louisville Southern, 27 cars; Alabama Great Southern, 49 cars (of which 14 are under trusts); Cincinnati, New Orleans and Texas Pacific, 69 cars (of which 15 are under trusts). Total, 347 cars.

It is believed that a study of these figures will suggest the fact that the equipment of both the Richmond and Danville and East Tennessee is totally inadequate for any considerable extension of business. It is true that, like most bankrupt or semi-bankrupt roads in the South, these systems have heretofore largely depended on their ability to borrow, or press into service, freight cars from their more prosperous connections in the North, but the rules are now drawn more tightly in this respect, and such customs prevail as will oblige them in future to be practically dependent on their own equipment; and, as the best equipped road cars, of course, offer the best facilities, it can get and will continue to get the larger business. As rates of compensation shrink, the only way to maintain revenue is to have more equipment, and to be able to do more business.

be restored to their former level. The contrary tendency is more likely to prevail. Instead of vainly hoping to do a small business at high rates, these properties must be put in such physical condition and furnished with such equipment as shall enable them to encourage the growth of the sections through which they pass, and to carry a larger business at low rates. Even the legitimate capitalization of the past, so far as it has been allowed to depreciate, must be adjusted to present conditions, and new cash capital must be secured to restore this waste and to modernize the roads and fit them to meet the transportation problems as they now exist.

There is no other basis on which it is worth while seriously to consider the reorganization of these systems.

(b)

The acquisition of the outstanding minority interests in the stock of various subordinate companies in the Richmond and Danville and East Tennessee systems, need not, as a rule, be considered until later in the course of reorganization.

A majority interest in the stock of the Central Railroad and Banking Co. of Georgia is represented by \$4,000,000 bonds and \$12,000,000 stock of the Georgia Company. Of this latter company, all the stock and \$3,447,000 of the bonds are owned by the Terminal Company. While effort must be made to protect these assets, it does not seem desirable at present to extend the reorganization in connection with the Georgia Central property.

The complexity of the situation is such that it is almost impossible to present statements except in general terms. It is believed, however, that the foregoing summaries indicate the situation with substantial accuracy, though they do not include many matters of importance, to which reference has been purposely omitted, in order to avoid undue complication.

(7)

(c)

The absolute fixed charges of the Richmond

Terminal, the Richmond and Danville system

and the East Tennessee system, viz.: interest

on bonds held by public, rentals, equipment

notes and sinking funds, and interest on float-

ing debts, Receivers' certificates, &c., amount

annually to about.....\$9,900,000

Their entire net earnings for the fiscal year end-

ing June 30, 1893, are estimated at..... 7,000,000

Resulting in a deficit for the year of about..\$2,900,000

=====

(d)

Since the appointment of Receivers, in June, 1892, it has been sought to hold together the various properties embraced in each system; and, with this object in view, coupons have been paid from bonds on many properties which in themselves do not warrant such payments.

A point in the finances of the Receivers has now been reached, however, where this course cannot be longer continued, and further defaults and general disintegration are imminent, unless prompt measures of relief, through reorganization, are adopted.

PRELIMINARY CONDITIONS OF PARTICIPATION UNDER THE PLAN.

(a)

(8) Participation under the plan of reorganization, in any respect whatsoever, by any stockholder or bondholder affected thereby (as specified in Sections IV. and VII.), is dependent on his depositing his holdings with the Depositaries, Messrs. Drexel, Morgan & Co., 23 Wall Street, New York, within such time as may be fixed, and will embrace only securities so deposited. As to the common stock of the Terminal Company and the several classes of stock of the East Tennessee Company so deposited, participation is further dependent on the payment of assessments, as provided in the plan (see pp. 15 and 22). All securities for deposit must be in negotiable form.

Each depositor under the plan also has the option of subscribing for new securities, as stated on page 14.

The assessments on deposited stock will be payable at the office of Messrs. Drexel, Morgan & Co. in four equal installments, at least 60 days apart, when and as called for by the Committee, by advertisement in each instance at least twice a week for two weeks in two daily papers of general circulation published in the city of New York. All payments must be receipted for by the Depositaries on the reorganization certificates. In case any depositor of stock shall desire two weeks' written or printed notice of the dates on which assessments are payable, the same will be mailed to such address as he may have filed with the Depositaries.

Failure to pay assessments when and as called will subject the deposit, and all rights on account of any prior payments, to sale, in such manner as the Committee may determine, and without further notice. Any surplus proceeds, after satisfying the assessment in full, together with

a penalty equal to 20 per cent. of such assessment, and a fair allowance for all charges and expenses incurred, will, on surrender of the reorganization certificate for the deposit so sold, be paid to the holder of such certificate, who shall have no other right thereunder or in respect of such deposit or prior payment.

In view of the fact that a considerable amount of securities affected by the present plan is still on deposit with the Central Trust Company of New York, any holder of the Trust Company's receipts for such securities may present the same at the office of Messrs. Drexel, Morgan & Co., and, in exchange therefor, obtain Reorganization Certificates under the present plan, thus avoiding the delay and risk incident to the actual transfer of securities from one office to another. Unless so exchanged, the receipts heretofore issued by the Trust Company will not entitle their holders to the benefits of the present plan.

(b)

Messrs. C. H. Coster, George Sherman and Anthony J. Thomas have undertaken to act as a Committee for the purpose of carrying out the plan of reorganization. The duties, powers and rights of the Committee, in connection with deposited securities and otherwise, are set forth in the Reorganization Agreement hereto attached (see pages 43 to 49), to which attention is invited.

(9)

PLAN OF REORGANIZATION.

(*With Explanations.*)

THE NEW RAILROAD COMPANY.

I.

What it is to Acquire and General Basis of the Reorganization.

(a)

A new railroad company will be created, or existing companies or charters will be utilized, or both. Throughout this plan, the expression "New Company" is intended to apply to whatever course may be followed. It is intended to bring into the new company, by way of direct ownership, collateral trust and stock control, such securities as accept the proposed terms, or the properties represented thereby.

The ultimate object of the reorganization (excluding the Georgia Central Co. from present consideration), is to have the New Company acquire, so far as practicable, the

ownership of the Richmond and Danville and East Tennessee systems, including the various securities now owned by the Terminal Company (which are mostly those pledged for its bonds), and the securities pledged for the Richmond and Danville and East Tennessee floating debts. It is believed that nearly all the Richmond and Danville system—except perhaps the leased lines between Goldsboro, N. C., and Atlanta, Ga.—embracing the essential features in that system now owned either by the Richmond and Danville Company or by the Terminal Company—can gradually be consolidated or closely united, and that a somewhat similar course can be followed with the East Tennessee. The new company may likewise hold an interest in the Georgia Central, unless it should be found desirable to dispose of this latter.

It is intended that the present disjointed and complicated system shall give place to one solid and permanent organization; but, in matters relating solely to operating and traffic, it must be recognized that the properties serve three great territorial sections, viz., the Richmond and Danville, the eastern slope of the Alleghanies to and around their southern limit; the East Tennessee proper, their western slope, and thence to the sea; while the Alabama Great Southern (including the C. N. O. & T. P.) secures the traffic from and for the west and northwest by way of Cincinnati and Louisville. The new organization must adapt itself to these physical and commercial features, and preserve to each system such a clear degree of local executive independence in matters outside of purely financial questions, as shall insure the identification of each property with the territory from which its business is derived.

Pending their use for reorganization purposes, all stocks and bonds deposited hereunder will be delivered by the Depositaries to the Central Trust Company of New York, as Custodian, to hold the same subject to the order and control of the Reorganization Committee, as required by them for the purposes of reorganization. All stocks and bonds so deposited are to be kept alive for the present, and they, as well as all railways acquired, are to be pledged as part of the security for the new bonds hereinafter provided for, except so far as such stocks and bonds may be converted or otherwise dealt with in effecting the purposes of the plan; and, in this latter case, the railways and other properties acquired in exchange therefor are to be so pledged.

(10) In this plan of reorganization, it has been sought to deal with each particular class of securities on its own merits, having due regard for its relation to all other

securities. In case any security holders affected by the reorganization fail to accept its provisions, or if, for any other reason, it shall seem desirable, the Committee is fully empowered to exclude any lines or system of lines from the reorganization, or to take such steps as it may deem best to protect the interests of the reorganization or of the new company in respect thereto; and, subject to the limitations expressed in the reorganization agreement, to acquire any other line or lines as a substitute for any property so excluded. The plan is, in all respects, subject to this distinct reservation.

This feature is of importance, especially as there are several leased or controlled lines which it is believed can be excluded from the reorganization altogether, without disadvantage to the New Company, and there are several others of more consequence with which a like course may be followed, if found desirable, without serious inconvenience to the reorganization.

(b)

About \$74,000,000 of the bonds and guaranteed stocks of the Richmond and Danville, and the East Tennessee systems, held by the public, are on properties which are believed, for the most part, to afford adequate security, and for this or other reasons this plan has not sought to disturb them. About \$50,000,000 (mostly recent issues) are junior liens, inadequately secured, or else are on new or branch lines of uncertain earning capacity, and the holders, in self-preservation, must make such reasonable concessions as the situation necessitates, taking compensation therefor in preferred or common stock of the new company. They would suffer greatly from foreclosure or disintegration, or from failure to come into the reorganization. The \$16,000,000 Richmond Terminal bonds are secured by collateral of importance, but of very small earning power, and, consequently, they must mostly be reduced to the rank of stocks. Their other alternative is a sale of the collateral which would satisfy the bonds in very moderate part only.

As a substantial offset to these necessary concessions by bondholders, and as an inducement therefor, the money required to discharge the floating debts of the railway systems and to provide for contingencies must be raised by assessments on the Terminal, and the East Tennessee stockholders, and by sale of new common stock. As the Terminal Company is simply the proprietary company, its stockholders are most vitally interested in preserving the

railway systems and in putting them on a sound financial basis.

(c)

The \$5,000,000 preferred stock of the Terminal Company must also be adjusted.

(11)

II.

New Stocks and Bonds.

(a)

The new company is to create the following securities:

(A) \$140,000,000 First Consolidated Mortgage and Callateral Trust One Hundred-Year Five Per Cent. Gold Bonds, secured by mortgage and pledge of all the property of the New Company, as hereinbefore provided (see page 9).

The fixed amount of this mortgage may hereafter be increased, with the written consent of the Stock Trustees hereinafter mentioned (either before or after the reorganization), for two purposes: (1st.) to acquire the Central R. R. and Banking Co. of Georgia and any of its allied or successor Companies (Georgia Central system), or additional securities thereof or modified interests therein. (2d) To acquire, in such form as may be determined, the ownership of the Cincinnati Southern Railway, now leased to the C. N. O. & T. P. Ry. Co. (or any other line as a substitute therefor), the present rental thereof being included in the fixed charges of the East Tennessee system. All properties, securities and interests so acquired will be assigned to, or deposited with, the Trustee of the new mortgage and subjected to the lien of the mortgage.

(B) \$75,000,000 Five Per Cent. Non-Cumulative Preferred Stock.

(C) \$160,000,000 Common Stock.

The new shares will be of a par value of \$100 each.

(b)

As a consideration for the property to be conveyed or delivered to the New Company by the Committee, or which, pursuant to this plan, the Committee shall enable the New Company to acquire, it is contemplated that the New Company shall issue and deliver the foregoing securities to the Committee, excepting the portions to be held against such of the existing bonds and guaranteed stocks as are not disturbed, and such final amounts as shall be

reserved for the future use of the New Company (see estimates on pp. 13 and 14).

The Committee will thus be enabled to make the requisite deliveries of the new securities to depositors and subscribers under the plan.

(c)

Both classes of stock of the new company (except such number of shares as may be disposed of to qualify directors) are to be issued to three Stock Trustees, who shall be appointed, on or before completion of reorganization, by Messrs. Drexel, Morgan & Co. The stock shall (12) be held by the Stock Trustees and their successors, jointly, for five years and for such further period (if any) as shall elapse before the preferred stock shall have paid five per cent. cash dividend in one year, although the Stock Trustees may, in their discretion, deliver the stock at any earlier date. Until delivery of stock be made by the Stock Trustees, they shall issue certificates of beneficial interest entitling the registered holder to receive, at the time herein provided, a stock certificate for the number of shares therein stated, and in the meanwhile to receive payments equal to the dividends collected by the Stock Trustees upon the number of shares therein stated, which shares, however, with the voting power thereon, shall be vested in the Stock Trustees until the stock shall become deliverable hereunder.

No additional mortgage shall be put upon the property to be acquired hereunder by the new company, nor shall the authorized amount of the preferred stock be increased, without the consent, in each case, of a majority in amount of the preferred stockholders.

The New Company may, at any time, exercise any charter right to redeem its preferred stock in cash, at par.

(d)

Under the present plan, \$6,800,000 in cash is to be raised from the sale of new bonds, while over twice that amount, or about \$16,500,000 in cash, is to be raised by selling new common stock, and from assessments, thus avoiding fixed charges on this sum. This, and other savings are expected to give a large earning power to the new preferred stock, so soon as the railways are brought up to a proper physical condition and sufficiently equipped, without regard to the very much larger measure of prosperity to come from proper development of the system.

It is useless to consider any reorganization which con-

tinues, as fixed charges, securities that are not now earning their interest. The future of such securities, to the extent that they fail to earn their interest, must depend on the development of the properties; and all that their owners can ask is that they shall be given new securities of such character as will yield such income as the properties earn.

They will not earn their income by standing still, much less by disintegration. With fresh capital enlisted, and a proper reorganization secured, there does not appear to be any good reason why the net earnings of the fiscal year 1891 (which would equal 4 per cent. on the amount of preferred stock which it is proposed to issue) should not be reached and passed in the early future. Such results cannot, however, be accomplished except by a liberal expenditure of new capital to put the properties in order, and to furnish needed equipment, and the ability to command such further capital from time to time as shall enable the new company to expand its business. *The present amount of business, which is nearly as much as the properties, with their existing facilities, seem capable of doing, will not secure such earnings.*

(13)

III.

Use of New Stocks and Bonds.

(a)

The proposed use of these securities is as follows :

BONDS.

Reserve to enable New Company to provide, as necessary or desirable, for a like aggregate amount of bonds and guaranteed stocks which are not disturbed (see VI. below)—to be issued only when and as the New Company shall pay off or acquire like amounts of such bonds and guaranteed stocks, viz. :

CARNEGIE STEEL CO., LIMITED, APPELLEE.

519

Richmond and Danville System.....	\$43,843,000
East Tennessee System.....	30,651,000
For bonds and guaranteed stocks which are to be readjusted (see VII. below), viz:	
\$25,149,000 on Richmond and Danville system, requiring.....	12,148,000
\$25,124,000 on East Tennessee system, requiring.....	8,050,000
For Terminal bonds (see IV. below).....	1,925,000
For offer to security holders for subscription (unwritten by a syndicate) at 85 per cent. and accrued interest (see below).....	8,000,000
Estimated amount to be reserved by the New Company under proper restrictions, to be used only for new construction, betterments, purchases of rolling stock, and extensions of and additions to the system (not over \$2,500,000 to be used in any one calendar year; except that, in addition to this annual appropriation, a total of \$3,000,000 bonds may be specifically appropriated, with the unanimous consent of the Stock Trustees, for the building of branches or extensions, if undertaken within 3 years after the creation of the new mortgage). All property acquired with these bonds or their proceeds to be brought under the lien of the new mortgage.....	35,383,000
	<hr/>
	\$140,000,000
	<hr/>

PREFERRED STOCK.

(Trust Certificates.)

For Terminal bonds and preferred stock, and for Terminal stock assessment (see IV. below).....	\$22,650,000
For Richmond and Danville and East Tennessee readjusted bonds (see VII. below).....	33,385,000
For assessment on and adjustment with East Tennessee stocks (see VII. below) less amount held by Terminal Co. and on which its stockholders pay the assessment.....	3,063,000
Estimated amount for the purposes of reorganization and acquisitions by or for the New Company.....	15,902,000
	<hr/>
	\$75,000,000
	<hr/>

(14)

(COMMON STOCK.)

(Trust Certificates.)

For Terminal Bonds and Preferred and Common Stockholders (see IV. below).....	\$76,454,000
For Richmond and Danville and East Tennessee disturbed bonds (see VII. below).....	3,468,000
For adjustment with East Tennessee stocks (see VII. below).....	24,427,000
For offer to security holders for subscription at \$15 per share (unwritten by a syndicate) as stated below.....	33,333,000
Estimated amount for purposes of reorganization and acquisitions by or for the New Company	22,319,000
	<hr/>
	\$160,000,000
	<hr/>

It has been arranged with the Depositories, Messrs. Drexel, Morgan & Co., that in addition to \$100,000 in cash to cover their office expenses, they shall receive as their compensation for their co-operation and supervision, which they agree to give to the work of the reorganization, \$750,000, payable entirely in common stock of the new company, at the rate of \$15 per share.

(b)

Referring to the \$8,000,000 new 5 per cent. bonds to be sold at 85 per cent. and interest, and the \$33,333,000 new common stock trust certificates to be sold at 15 per cent., the Committee will give to the depositors of all classes of Terminal securities, and of all classes of readjusted securities of the Richmond and Danville and East Tennessee systems, the privilege of subscribing for these new stocks and bonds to the extent of \$1,000 new bond and \$4,000 of new stock trust certificates for each \$22,000 par value of stocks or bonds, deposited hereunder. Such subscription need not be made at the time of depositing securities, but it must be made at the office of Messrs. Drexel, Morgan & Co. between such dates as the Committee shall hereafter fix, and failure so to subscribe shall constitute an absolute waiver of all right to subscribe. Payment thereunder to be as follows:

Twenty-five per cent. of cash cost to be paid on application, for which negotiable receipts will be given. Balance of cash cost to be paid when the new securities are ready for delivery, of which notice shall be given by advertisement, as in the case of stock assessments. Arrangement

may also be made by subscribers for notices by mail, as in the case of stock assessments. Interest at 5 per cent. per annum will be allowed on the first payment from the time it is made to the date for which the final payment is called. Failure to make final payment, as aforesaid, will subject the first payment to forfeiture, in the discretion of the Committee, and in case of such forfeiture the Committee may dispose of the securities in its discretion.

Any depositor desiring to subscribe for an amount in excess of that to which he is entitled to subscribe, may make separate application for such excess (which must be for a \$1,000 bond and 40 shares of stock, or some multiple thereof), and the Committee will, in its discretion, award the same if practicable.

The exercise of the foregoing right of subscription is not in any way compulsory on depositors; its exercise or rejection neither increases nor diminishes their other rights hereunder.

This right of subscription does not in any way attach to any Reorganization Certificate for deposited securities, but is personal with the Depositors or their assigns.

An underwriting syndicate will take the bonds and stock not subscribed for by the Depositors, and will take the place of non-depositing holders of common stock of the Terminal Company and of stocks of the East Tennessee Company, as stated on page 35.

THE RICHMOND AND WEST POINT TERMINAL RAILWAY (15) AND WAREHOUSE COMPANY.

IV.

Adjustment of the Terminal Securities.

(a)

The following is the basis of adjustment with the Richmond and West Point Terminal security holders, in securities of the new company.

	NEW 5% BONDS. Bearing Interest from July 1st, 1893.	NEW PREFERRED STOCK. (Trust Certifi- cates.)	NEW COMMON STOCK. (Trust Certifi- cates.)
1% Terminal Bonds (with coupons due on and after August 1st, 1892.) to receive.....	35%	50%	
5% Terminal Bonds (with coupons due on and after September 1st, 1892.) to receive.....		70%	30%
Terminal Preferred Stock to receive....		35%	65%
Terminal Common Stock (on payment of assessment of \$12 50-100 per share) to receive..		12½%	100%

To participate in this readjustment, holders of the present securities must conform to the conditions set forth on page 8.

Each depositor under the plan also has the option to subscribe for new securities as stated on page 14.

V.

Reasons for Adjustment of Terminal Securities.

The following will explain the basis on which the Terminal securities are adjusted under the plan of reorganization :

1. The \$5,500,000 Terminal 6 per cent. bonds are secured by :

- \$1,760,000 Capital Stock of Richmond and Danville R. R. Co ;
 - 6,000,000 First Preferred Stock of East Tennessee, Virginia and Georgia Ry. Co. ;
 - 1,000,000 Common Capital Stock of Columbia and Greenville R. R. Co ;
 - 1,000 Preferred Stock of Columbia and Greenville R. R. Co. ;
 - 3,100,000 Capital Stock of Virginia Midland Ry. Co ;
 - 1,325,000 First Consol. Mtge. Bonds Western North Carolina R. R. Co ;
 - 4,110,000 Second Mtge. Bonds Western North Carolina R. R. Co. ;
- And by a lien on \$2,500,000 Richmond and Danville Stock subject to the lien of the Terminal Preferred Stock, as stated below.

Of these, the only securities paying any income are the Western North Carolina Firsts.

Of the others, the Virginia Midland stock shows prospective earning capacity, but that company has a floating debt (to the R. & D.) of \$500,000.

(16) The East Tennessee stock is liable to total extinction unless saved by assessment under reorganization.

The Columbia and Greenville does not earn its interest, and has a floating debt (to the R. & D.) of \$650,000.

2. The \$11,000,000 Terminal 5 per cent. bonds are secured by :

- \$11,000,000 Capital Stock of the Georgia Company.
- 1,300,000 Capital Stock of Charlotte, Columbia and Augusta R. R. Co.
- 470,000 Capital Stock of Virginia Midland Ry. Co.
- 3,165,000 Common Capital Stock of Western North Carolina R. R. Co.
- 3,160,000 Preferred Stock of Western North Carolina R. R. Co.
- 4,370,000 Capital Stock of Georgia Pacific Ry. Co.
- 1,397,000 Income Mtge. Bonds of Georgia Pacific Ry. Co.
- 215,000 Second Mtge. Bonds of Asheville and Spartanburg R. R. Co.
- 1,040,000 Capital Stock of Asheville and Spartanburg R. R. Co.
- 625,000 Income Bonds of Wash., Ohio and Western R. R. Co.
- 1,510,000 Capital Stock of Wash., Ohio and Western R. R. Co.
- 315,000 General Mtge. Bonds, Northeastern R. R. Co. of Ga.
- 120,000 Capital Stock of Northeastern R. R. Co. of Ga.

300,000 Capital Stock, Richmond and Mecklenburg R. R. Co.
 708,100 Capital Stock, Richmond and Danville R. R. Co.
 3,447,000 Georgia Co. 5 per cent. Collateral Trust Bonds.
 2,283,200 Capital Stock, E. T., V. & G. Ry. Co. 1st Preferred Stock.
 4,225,000 Capital Stock, E. T., V. & G. Ry. Co. 2d Preferred Stock.
 220,000 Capital Stock, Central R. R. & B. Co. of Ga. Stock.

Also by a second lien on the securities deposited to secure the 6 per cent. bonds, as above, and by lien on \$2,500,100 Richmond & Danville stock, subject to the lien of the Richmond Terminal preferred stock, as stated below, and the lien of the 6 per cent. bonds on \$2,500,000 thereof, as stated above.

None of the securities enumerated above is yielding any revenue. The Georgia Central and Georgia Company are in default on their bonds and the Georgia Central has some \$7,500,000 of floating debt. The various other companies whose stocks are pledged (exclusive of Richmond and Danville, and East Tennessee stocks) owe floating debts to the Richmond and Danville aggregating from \$6,000,000 to \$7,000,000 but are quite unable to pay them.

3. The \$5,000,000 Terminal preferred stock is a lien on income from \$2,500,100 Richmond and Danville stock. Richmond and Danville stock is liable to be extinguished either by mortgage foreclosure or by judgment creditors, as explained on pages 38 to 41. Formerly the Richmond and Danville had good credit, but in more recent years it has assumed numerous and very onerous obligations. With \$5,000,000 capital, it is responsible for \$60,000,000 of debts and absolute guarantees. It *owns in fee* 152 miles of railroad, and, indirectly owns about 300 miles additional, made up, for the most part, of branch lines not earning their operating expenses. It leases or operates about 3,000 miles additional.

4. The \$70,000,000 Terminal common stock has no value, actual or prospective, except through reorganization.

The Terminal Company has lent the Richmond and Danville Company securities worth over two million dollars, and the last-named company has pledged them for its debts, and, being insolvent, is absolutely unable to release or return them. This fact emphasizes the general proposition, that, as the Terminal Company is substantially the sole stockholder of the Richmond and Danville Company as well as its largest unsecured creditor, and is also the owner of many of the junior bonds of the system, (17) the salvation of the Terminal Company is in bringing about the restoration of the Richmond and Danville system to solvency and prosperity. The Terminal Company is also largely interested in the East Tennessee Company as stockholder and otherwise, and must necessarily seek to bring about a rehabilitation of the affairs of that

system also. As all this involves concessions not only by the Terminal Company security holders, but also by many bondholders of the Richmond and Danville and East Tennessee systems, the first requirement is that the Terminal security holders shall recognize and meet the situation to the utmost of their ability, as, otherwise, they cannot expect or reasonably ask, concessions from any Richmond and Danville or East Tennessee bondholder.

The present plan of reorganization seeks to bring this about, and to enable all who now make necessary concessions to derive the benefits thereof, once the companies shall be restored to prosperity.

The other alternative is a general dissolution of the component parts of the Richmond and Danville and East Tennessee systems—which is now *imminent*. This would be disastrous to *all* interests, and would practically mean the annihilation of the Terminal Company. Nearly all the assets of that Company (by whatever name *called*) are merely *equities* in the various parts of the two systems mentioned and in the Georgia Central system; and if these equities are destroyed, nothing will remain for the Terminal stockholders and very little for the Terminal bondholders. There would seem to be no escape from this conclusion.

THEORY OF ASSESSMENT.

Following out the proposition heretofore laid down that it is for the *stockholders* to provide for acquisition or extinction of the floating debts of the two railway companies, it may be pointed out that, as the R. & D. has about \$7,000,000 floating debt, *its* stockholders must raise that sum, and, as the East Tennessee has about \$3,000,000 floating debt in addition to \$700,000 car-trust obligations maturing in the next two years, *its* stockholders must raise that amount. As the terminal owns practically all the R. & D. stock, an assessment of \$7,000,000 upon it becomes necessary to clear off the R. & D. debt; and, proportionately to its holdings of East Tennessee stock, the Terminal Company must provide for the debt of that system, or, say, for \$1,200,000. Add to this the Terminal floating debt of \$100,000, and the total is about \$8,300,000, which, as nearly as may be, with a fair allowance for contingencies, is the amount for which the Terminal stockholders are assessed.

The necessity for this course is manifest; and its advantage is that it gives to the new company, without any fixed charge, a large amount of hypothecated bonds which otherwise would be sold to satisfy the loans, and which, of course, would rank equally with the other outstanding bonds of the same series.

**THE RICHMOND AND DANVILLE RAILROAD SYSTEM AND
THE EAST TENNESSEE, VIRGINIA AND GEORGIA
RAILROAD SYSTEM.**

(18)

VI.**List of Undisturbed Securities.**

The plan does not disturb the following bonds and guaranteed stocks held by the public, a like amount of the new bonds being held, under the plan, which the new company can use for their payment or acquisition at or before maturity :

RICHMOND AND DANVILLE SYSTEM.**Richmond and Danville :**

Consolidated 6's.....	\$5,997,000
Debenture 6's.....	3,368,000
Equipment 5's.....	1,493,000

Richmond, York River and Chesapeake :

First Mortgage 8's.....	400,000
Second Mortgage 6's.....	500,000
Stock, 6 per cent.....	497,500
North Carolina Stock, rental 6½ per cent....	4,000,000

Atlanta and Charlotte :

First Mortgage Preference 7's.....	500,000
First Mortgage 7's	4,250,000
Income 6's.....	750,000
Stock	1,700,000

Washington, Ohio and Western :

First Mortgage 4's.....	1,000,000
-------------------------	-----------

Virginia Midland :

Serials and Incomes.....	7,645,000
General Mortgage 5's.....	4,859,000

Charlottesville and Rapidan :

First Mortgage 6's.....	421,700
-------------------------	---------

Franklin and Pittsylvania :

First Mortgage 6's.....	85,000
-------------------------	--------

Western North Carolina :

First Mortgage 6's.....	2,531,000
-------------------------	-----------

Charlotte, Columbia and Augusta :

First Mortgage 7's.....	2,000,000
Second Mortgage 7's.....	500,000

Atlantic, Tennessee and Ohio :

First Mortgage 6's.....	150,000
-------------------------	---------

Georgia Pacific :

Equipment 5's.....	1,052,000
--------------------	-----------

Hartwell :

First Mortgage 10's	3,800
---------------------------	-------

Baltimore and Chesapeake Steamboat R. E. 6's..	140,000
--	---------

Total bonds, RICHMOND AND DANVILLE

system, not disturbed.....	\$43,843,000
----------------------------	--------------

(19) EAST TENNESSEE SYSTEM.

East Tennessee, Virginia and Georgia :

First Mortgage 7's.....	\$3,123,000
First Mortgage 5's.....	3,106,000
Consolidated 5's.....	12,770,000
Alabama Central 6's.....	1,000,000
Knoxville and Ohio 6's....	2,000,000
Memphis and Charleston :	
Second Mortgage 7's.....	105,000
First and Second Extended 7's.....	2,155,000
Consolidated Mortgage 7's, No. 1 @ 1,400.	1,400,000
Alabama Great Southern Railway Co. :	
First Mortgage 6's Bonds.....	1,750,000
General Mortgage 5's Bonds.....	2,313,360
Funding Certificates 4's.....	258,832
Alabama Great Southern Railway Company, Limited :	
Debentures, 6's about.....	670,000

Total bonds, EAST TENNESSEE system, not disturbed.....	\$30,651,192
---	--------------

(20)

VII.

**List of Readjusted Securities of the Richmond and Danville
and East Tennessee, Virginia and Georgia Systems
and Basis of Readjustment**

It is necessary to make readjustment of certain bonds and guaranteed stocks of the Richmond and Danville and East Tennessee systems, and the various classes of East Tennessee stocks. Such bonds and guaranteed stocks and East Tennessee stocks must be deposited with Messrs. Drexel, Morgan Co. (see page 8), in exchange for their negotiable certificates for same, redeemable, on completion of the reorganization, in securities of the new company on the basis set forth below :

CARNEGIE STEEL CO., LIMITED, APPELLEE.

527

Name of Company.	Amount Issued.	To Receive in Securities of the New Company.			Interest on Amount of New Bonds to be Adjusted from.
		New Five Per Cent. Bonds.	New Preferred Stock. (Trust Certificates.)	New Common Stock. (Trust Certificates.)	
Richmond and Danville: Consolidated 5's (with coupons due on and after October 1st, 1892.).....	\$4,528,400 ^a	100%	5%		April 1, 1893.
Richmond and Mecklenburg: 1st Mortgage 6's (with coupons due on and after November 1st, 1893.).....	315,000	80%	20%		May 1, 1893.
Charlotte, Columbia & Augusta: 1st Consolidated 6's (with coupons due on and after July 1st, 1893.).....	500,000	100%	20%		Jan'y 1, 1893.
Atlantic, Tennessee & Ohio: 5% Stock (with dividends due on and after October 1st, 1893.).....	400,000	20%	80%		April 1, 1893.
Chester and Lenoir: 1½% Stock with dividends due on and after April 1st, 1893.....	345,400			100%	
1st Mortgage 7's (with coupons due on and after January 1st, 1893.).....	350,000 ^c		100%		

^a Of these \$1,487,000 R. & D. Consol. 5s, \$87,500 Chester and Lenoir First Mortgage 7's are to be acquired for the new company through liquidation of the floating debts for which they are pledged.

(21) Name of Company.	Amount Issued.	To Receive in Securities of the New Company.			Interest on Amount of New Bonds to be Adjusted from.
		New Five Per Cent. Bonds.	New Preferred Stock. <i>Trust Cer- tificates.</i>	New Common Stock. <i>Trust Cer- tificates.</i>	
Cheraw and Chester: 1½% Stock (with dividends due on and after October 1st, 1893.).....	\$ 473,350*	.....	.....	10%	
First Mortgage 7's (with cou- pons due on and after Janu- ary 1st, 1893.).....	150,500*	.....	100%		
Columbia and Greenville: First Mortgage 6's (with cou- pons due on and after July 1st, 1893.).....	2,000,000	100%	20%		Jan'y 1, 1893.
Second Mortgage 6's (with coupons due on and after April 1st, 1893.).....	1,000,000	.....	120%		
Clarksville and North Carolina: First Mortgage 6's (with cou- pons due on and after No- vember 1st, 1892.).....	111,000	30%	70%		May 1, 1892.
Oxford and Clarksville: First Mortgage 6's (with coupons due on and after November 1st, 1892.).....	750,000	30%	70%		May 1, 1892.
Northwestern North Carolina: First Mortgage 6's (with coupons due on and after April 1st, 1893.).....	1,500,000*	35%	65%		Oct. 1, 1892.
Spartanburg, Union and Columbia: First Mortgage 5's (with coupons due on and after January 10th, 1893.).....	1,000,000	30%	70%		July 1, 1892.
Asheville and Spartanburg: First Mortgage 6's (with coupons due on and after October 1st, 1892.).....	500,000	.....	40%	60%	
Northeastern of Georgia: First Mortgage 7's (with coupons due on and after November 1st, 1893.).....	250,000*	60%	40%		May 1, 1893.
Danville and Western: First Mortgage 5's (with coupons due on and after October 1st, 1892.).....	1,052,000*	.....	100%		
Roswell: First Mortgage 7's (with coupons due on and after July 1st, 1893.).....	35,000*	.....	100%		
Macon and Northern: First Mortgage 4½'s (with coupons due on and after March 1st, 1893.).....	2,200,000	.....	50%	50%	

* Of these \$50,500 Cheraw and Chester First Mortgage 7's; \$50,400 Cheraw and Chester stock; \$167,000 Northwestern North Carolina first mortgage; \$55,000 Danville and Western first mortgage; \$2,500 Roswell first mortgage; are to be acquired for the new company through liquidation of floating debt and Terminal bonds for which they are pledged.

† These bonds are guaranteed by the State of Georgia. The above terms of readjustment are based solely on what is believed to be the value of the mortgaged property to the new company.

(22) Name of Company.	Amount Issued.	To Receive in Securities of the New Company.			Interest on Amount of New Bonds to be Adjusted from.
		New Five Per Cent. Bonds.	New Preferred Stock. (Trust Cer- tificates.)	New Common Stock. (Trust Cer- tificates.)	
Georgia Pacific: First Mortgage 6's (with cou- pons due on and after July 1st, 1893.).....	\$5,600,000	90%	4%	.....	July 1st, 1893, (coupon due July 1, 1893, on bonds de- posited un- der plan will be purchased at par in cash).
Consolidated Second Mort- gage 5's (with coupons due on and after October 1st, 1892.).....	5,002,000*	.....	100%	.....
East Tennessee, Virginia and Georgia: Improvement and Equipment 5's (with coupons due on and after March 1st, 1893.)	6,000,000	60%	70%	.....	Sept. 1, 1892.
First Extension 5's (with coupons due on and after October 1st, 1892.).....	7,000,000*	25%	80%	.....	Oct. 1, 1893.
General Mortgage 5's (with coupons due on and after October 1st, 1892.).....	6,000,000	.....	125%	.....
Cincinnati Extension 5's (with coupons due on and after August 1st, 1893.)...	864,000	50%	100%	.....	July 1, 1893.
Memphis and Charleston: Consolidated Mortgage 7's, Nos. 3,837 at 4,700 (with coupons due on and after January 1st, 1893.).....	1,000,000	.....	130%	.....
Mortgage 6's of 1884 (with coupons due on and after January 1st, 1893.).....	5,000,000*	70%	†30%	.....	Jan'y 1, 1893.
Louisville Southern: First Mortgage 5's (with coupons due on and after July 1st, 1893.).....	3,000,000	.....	50%	50%	
Mobile and Birmingham: First Mortgage 5's (with coupons due on and after July 1st, 1892.).....	11,000,000‡	.....	15%	85%	
East Tennessee, Virginia and Georgia: First preferred stock (on pay- ment of assessment of \$3 per share).....	18,500,000‡	.....	0%	80%	
Second preferred stock (on payment of assessment of \$0 per share).....	27,500,000‡	.....	0%	0%	
Common stock (on payment of assessment of \$0 per share).....					

* Of these \$3,837,114 Georgia Pacific second mortgage; \$3,080,000 East Tennessee, Virginia and Georgia First Extension and General Mortgage 5's; \$500,000 Louisville Southern firsts, are to be acquired by the new company through liquidation of floating debts and Terminal bonds for which they are pledged.

† For each bond of \$1,000 of the Louisville Southern R. R. Co., accompanied by \$1,000 stock of that company, \$150 additional of new preferred stock will be allowed.

‡ Of the East Tennessee stocks, the Terminal Company holds the following amounts (which are included in the above totals), viz.: \$8,783,200 first preferred, \$5,575,000 second preferred, \$5,880,000 common, which will be acquired for the new company through liquidation of the debts for which they are pledged, etc.

§ These assessments are payable as provided on page 8.

(23) It is expected to adjust in cash, either during or on completion of reorganization, all interest accruing during reorganization on basis of new bonds; but, if for any unexpected cause, this cannot be done, the right is reserved to adjust and pay interest accruing during that period in new bonds at 85 per cent. and accrued interest, using sufficient additional bonds for this purpose.

VIII.

General Theory of This Readjustment.

No attempt is made to disturb any bonds which are believed to be adequately secured. The reduction is made entirely on the weaker bonds, and, as will be seen from the table appended (see IX.), in each instance the change is absolutely necessary to bring the charges upon the particular property affected within its present earning capacity.

The general theory of adjustment of disturbed bonds has been to substitute for them the new five per cent. bonds to such an extent as is warranted by the earnings and situation of the properties covered by the present mortgages, and the new preferred stock for the remainder of principal. In some cases, where the bonds are on properties of no actual and little prospective earning capacity, a more severe reduction is necessary. In several instances, where the bonds are on properties which are likely to improve more rapidly than other disturbed parts of the system, this fact is recognized, and an extra allowance is made in compensation therefor. Finally, in one or two cases where the bonds are on properties the loss of which would adversely affect the rest of the system, a proper recognition is made of this fact.

IX.

Detailed Explanation of the Readjustment.

In explanation of contemplated changes of bonds, the following tables are submitted showing (1) gross and (2) net earnings of each line of road, made up with reference to the various mortgages—the year ending June 30, 1893, being estimated; (3) items which are found to have been charged to “construction,” but which it is believed should clearly and beyond *any* question have been charged to

"operating;" (4) actual net earnings remaining; (5) present fixed charges, *exclusive* of interest on unsecured floating debt or on bonds junior to those which it is proposed to disturb, but including interest on bonds, not junior to those disturbed, pledged for floating debt; (6) proposed new fixed charges on basis of bonds to be actually outstanding in the hands of the public, uncontrolled, after reorganization; (7) general explanations, embracing various facts and figures arrived at by personal examination of the financial and physical conditions of the several properties. It is impossible to condense into a plan like this all information bearing on the subject, and the data, especially as (24) to physical conditions, are intended merely to indicate the general situation. The estimates for the fiscal year ending June 30th, 1893, are based on actual results to January 1st, 1893, or later; but, of course, are dependent on many conditions which may not now be clearly foreseen. They will necessarily depend to some extent on the policy followed during the remainder of the fiscal year as to maintenance of the properties. Sufficient maintenance would, in all probability, *considerably* reduce the estimates of net results in many instances.

As an example of the manner in which accounts have been kept, it may be mentioned that in the operating expenses of the entire Richmond and Danville system only \$20,000 were charged for renewal of rails in the fiscal year ending June 30, 1890, and not a dollar in the fiscal years ending June 30, 1891 and 1892, respectively. In seven months under the Receivership (July, 1892, to January, 1893, inclusive), about \$600 were charged. Since that date, it is understood, about \$18,000 have been charged. With these exceptions, all renewals of rails were charged to *construction account*! Renewals, properly to be included in operating expenses, would be at least \$100,000 to \$150,000 per annum. Other instances, almost as bad, could be stated.

On the East Tennessee system renewals of nearly all kinds have, for the last few years, been insufficient, excepting some portions of the line between Bristol and Chattanooga, and in part, the C., N. O. and T. P. and the Alabama Great Southern; but, *so far as made*, they have been charged with comparative fairness, although the tendency has been to swell construction account and diminish operating expenses.

It will be noticed that, in the following tables, the deductions made in the fifth column from net earnings are solely for renewal items *improperly charged* to construc-

tion account.* No part of such deductions is for neglected renewal and maintenance, although past neglect must be made good in the near future, and further deterioration avoided by proper maintenance, or else further loss of traffic will result.

It will likewise be noticed that the various branch lines own very little or no equipment. Such as any of them do own is generally of the most antiquated pattern.

* It must be borne in mind that there are many other items charged to construction account, especially in the Richmond and Danville system, which, beyond a reasonable doubt, belong to operating expenses; but they cannot be traced back in sufficient detail to warrant their specification and deduction.

An examination of the so-called current assets of these systems also shows that there have been carried among them a number of worthless accounts which should have been written off in previous years, a course which would have made the earnings correspondingly less. For instance, among the Richmond and Danville "*assets*," as they stand to-day, may be found such items as: Bills receivable (worthless), \$45,000; fires (!), \$32,043.09; E. T. V. & Ga. accident (!) \$16,466.15; worthless claims and balances, etc., probably \$200,000; and losses on certain traffic contracts, \$92,174.50.

These items are the most easily identified; there appear to be a good many others of like character.

In the case of the East Tennessee, like conditions are equally manifest. Reference to its report of June 30, 1892, page 24, will show that, on the turning of the property over to the Receivers, \$354,808.40 was charged off to *Profit and Loss*, but not deducted from the stated earnings of that or previous years. In response to any inquiry the explanation is given that they are "old accounts, the accumulations of years, supposed to be worthless." It will easily be appreciated that, although no deduction is made for any of these items in the tables which follow herein, their proper distribution in the years to which they belonged would have correspondingly reduced the earnings of those years.

Losses of the character indicated are always arising on railroads, and, unless watchfulness is exercised, they are too often carried along on the books, just as has happened in the cases above indicated.

(34) In many quarters the opinion prevails that, with a recovery in the South from present depression, the properties embraced in the "Terminal System" (so called) would enjoy renewed prosperity. In one sense and to a certain limited extent, this is true, but one great and continuing cause of their collapse is to be found in the decrease in revenue, due to a natural decline in rates of compensation. In point of fact, the Richmond and Danville carried, in the fiscal year 1892, a slightly larger tonnage than in 1891—the increase in ton miles being 5 3-10 per cent. As already explained on page 6, the railways of the South formerly obtained high rates for transportation, but in this respect a rapid change has been going on, and is likely to continue, though perhaps less rapidly; and Southern railways must adjust themselves to it. Large earnings in future can be obtained only by modernizing and enlarging the properties, so as to increase their business and decrease the proportionate cost of operation. With this done, there appears no reason whatever to doubt that such a degree of prosperity can be brought about as will justify the various security holders for the concessions which they are now called on to make.

The rates to-day, especially on the Richmond and Danville, are high in comparison with those obtained on other Southern roads, as may be seen from the following table showing the rate per ton per mile on freight for the periods indicated:

	Years Ending June 30,	
	1891.	1892.
Mobile and Ohio.....	0.888	0.864
Illinois Central.....	0.934	0.908
Louisville and Nashville.....	0.726	0.70
Richmond and Danville (entire system).....	1.31	1.23
East Tennessee (proper).....	0.91	0.87
Cincinnati, New Orleans and Texas Pacific.....	0.88	0.87
Alabama and Great Southern.....	0.85	0.72
Memphis and Charleston.....	0.869	0.847

It is true that the favorable average rate on the Richmond and Danville is partly due to the high charges on its numerous branch lines, although the Illinois Central and Louisville and Nashville also have numerous branches. But, even on its main lines, the rates are as high as and higher than on other systems, as is shown by the following table of rates on some of the main lines of the Richmond and Danville system, viz.:

	Years Ending June 30,	Six Months Ending
	1891.	December 31, 1892.
Richmond York River and Chesapeake...	1.42	1.35
Richmond and Danville (proper).....	1.33	1.30
Virginia Midland.....	1.11	1.08
North Carolina.....	1.04	1.02
Atlanta and Charlotte Air Line.....	1.10	0.99
Georgia Pacific.....	0.92	0.84
		0.76

It will be noticed that the greatest reduction that has taken place is on the southern part of the system. This is the direct result of division of business among too many recently constructed railroads throughout South Carolina, Georgia and Alabama.

THE FINANCIAL FEATURES OF THE REORGANIZATION.

X.

(35) Cash Provision and Syndicate.

(a)

The plan provides cash from :

Assessments on Terminal stock (covering that company's holdings of Richmond and Danville and East Tennessee stocks).	\$8,750,000
Assessments on East Tennessee stocks, held by public.	2,700,000
Sale of \$33,333,000 new common stock.	5,000,000
Sale of \$8,000,000 new bonds.	6,800,000
	<hr/>
	\$23,250,000
	<hr/>

The cash expenditures are estimated at :

For floating debts, as estimated January 1st, 1893.	\$10,100,000
For floating debt (additional amount to provide for any further liabilities including sums which have accrued since January 1st, 1893)	1,500,000
For floating debt (equipment notes)	1,300,000
New construction and equipment on Richmond and Danville system, estimated during two years, say.	4,000,000
New construction and equipment on East Tennessee system, estimated during two years, say.	4,000,000
Leaving to provide for expense of reorganization, and for any contingencies—surplus to be available for the general purposes of the new company.	2,350,000
	<hr/>
	\$23,250,000
	<hr/>

(b)

In anticipation of the acceptance of the plan by a majority in amount of the Terminal security holders, a Syndicate of \$15,000,000 in money has been formed to guarantee subscriptions by security holders, as provided on page 14, for \$33,333,000 common stock of the new company at \$15 per share, and for \$8,000,000 of the new company's five per cent. bonds at 85 per cent. and accrued interest, and to take the place and succeed to all the rights of holders of the Richmond Terminal common stock and East Tennessee stocks, who shall not deposit their stock and pay assessments thereon.

It will probably be necessary to arrange with the Syndicate for loans during the reorganization.

XI.

Estimate of Net Earnings, Fixed Charges and Outstanding Capitalization of New Company.

(36) The nominal net earnings of the Richmond and Danville and East Tennessee systems for year ending June 30, 1891, were (after eliminating "bookkeeping") considerably over \$9,000,000.

In year ending June 30, 1892,

The net earnings of both systems were.....	\$7,800,000
Out of which there was due the minority stock-holders of the C. N. O. & T. P. and Alabama Great Southern Companies about.....	75,000
	<hr/>
	\$7,725,000

Under the proposed plan of reorganization the fixed charges of the new company, embracing the Terminal, and the Richmond & Danville, and East Tennessee systems, including Cincinnati Southern rental, and interest on the \$8,000,000 bonds to be issued for new construction are estimated to be reduced to.....

6,789,000

Estimated surplus on earnings of 1891-2.....	936,000
	<hr/>
	=====

Included in the fixed charges is interest on \$8,000,000 bonds, of which the proceeds are to be used for new construction &c., though in the estimate of earnings nothing has been added as coming from this outlay. This margin may be considered an offset for such sum as otherwise should be deducted from the foregoing net earnings because of insufficient maintenance.

The net earnings in the year ending June 30, 1893, probably will not exceed.....	\$7,000,000
Deduct fixed charges, as estimated, after reorganization, as above.....	6,789,000
Estimated surplus on earnings of 1892-3.....	\$211,000

Taken more in detail, the estimate for the year ending June 30, 1893, shows :

Richmond and Danville System, net earnings..	\$3,650,000
Richmond and Danville System, proportion of new fixed charges..	\$3,266,000
East Tennessee System, net earnings.....	3,350,000
East Tennessee System, proportion of new fixed charges and rentals..	3,123,000
New bonds for construction (\$8,000,000 at 5 per cent).....	400,000
	<hr/>
	\$6,789,000 \$7,000,000
Total earnings.....	\$7,000,000
Total fixed charges,	6,789,000
	<hr/>
Estimated surplus, as before, 1892-3	\$211,000

(37) On the basis herein set forth, assuming that all the properties are brought into the reorganization, and capitalizing the C. N. O. & T. P. rental at \$18,000,000 bonds, the capitalization of the new company, outstanding on completion of the reorganization, may be estimated at* :

About \$20,000 bonds per mile of railroad owned or controlled.

About \$10,000 preferred stock per mile of railroad owned or controlled.

About \$25,000 common stock per mile of railroad owned or controlled.

Proposed new fixed charges (including rental paid by C. N. O. & T. P.) are estimated at under \$1,150 per mile.

These figures will suggest that, even after allowing for any contingencies which are likely to arise, the New Company is expected to be organized on a conservative basis.

* These figures will be somewhat affected by such arrangements as may be made later in the reorganization to acquire the outstanding minority interests in stocks of certain of the subordinate companies in the Richmond & Danville and East Tennessee systems (see p. 6). With two or three exceptions, they are of little value, and need not be acquired unless on an almost nominal basis.

The properties which it is sought to embrace in the reorganization earned in the year ending June 30, 1891, nearly \$30,000,000 gross, and in the year ending June 30, 1892, about \$28,500,000 gross. This year they will probably not earn over \$27,000,000 gross.

With the early improvements and additions contemplated in the plan of reorganization, there would seem to be no good reason why the total of \$30,000,000 should not soon again be reached and exceeded, nor, with the roads adapted to economical operation, why something like 30 to 33 per cent. of the sum should not be *net* revenue. Experience has shown that an efficient road, with ample equipment, can be operated and thoroughly maintained at a lower ratio to gross earnings than that at which it is possible to operate and only partially maintain a poor and inefficient property. The difference is largely represented by the great saving of time, material and labor in moving trains on a property thoroughly adapted and kept up to the work it has to perform.

It is firmly believed that these properties are susceptible of very great and profitable development.

XII.

Comparison of Present and Proposed Indebtedness.

(a)

Present Indebtedness (exclusive of all bonds held by Terminal Co.):	
Terminal bonds (held by Public)	\$16,179,000
Richmond and Danville bonds (held by public)	68,992,000
East Tennessee bonds (held by public)	55,776,000
Floating debt (Bills payable, Receiver's certificates, &c.	\$140,947,000
" (miscellaneous)	10,100,000
Equipment notes	1,500,000
	1,300,000
	<u>\$153,847,000</u>
Proposed bonds outstanding when reorganized (including about \$8,000,000 for new construction, &c.	104,617,000
Reduction of debt	<u>\$49,230,000</u>

THE NECESSITY FOR AND BENEFITS FROM THOROUGH REORGANIZATION.

XIII.

(38) The suggestion has been frequently made that the fixed charges of the Richmond and Danville and East Tennessee systems, respectively, if taken alone, are within their earning capacity; but the idea is erroneous.

(a)

Considering the Richmond and Danville by itself, it might be possible, under some arrangement, to disregard such securities held by the Terminal Company as are on worthless lines; but, if it comes to a severance of present *close relations* between these two companies, the creditors of the Terminal Company will insist that interest be paid on the sound obligations of the Richmond and Danville system held by the Terminal Company, and also (if the theory be correct that the Richmond and Danville can take care of itself, or can meet its obligations), that the Richmond and Danville account to the Terminal Company for the loan of bonds and stocks worth over two million dollars, made to enable the former to carry its floating debt. It need hardly be stated that the Richmond and Danville is totally unable to respond to any such demand. Apart from this, however, and looking only at current revenues and liabilities, the results are:

Richmond and Danville system net earnings estimated, 1892-1893 (<i>without deduction for insufficient maintenance</i>)	\$3,650,000
Interest and sinking funds on bonds held by public (exclusive of Macon and Northern)	\$4,023,000
Interest on bonds, &c., held by Terminal Co. on R. & D. lines that are earning interest (exclusive of those pledged for R. & D. floating debt) at least.	80,000
Interest on Receivers' certificates and floating debt, say on \$7,000,000 at 6 per cent.*	420,000
	<hr/> \$4,523,000
	<hr/> \$873,000
Add liability on guarantee of Macon and Northern jointly with Central R. R. & B. Co. of Ga.	99,000
Add liability on Cincinnati Extension bonds jointly with East Tennessee	300,000
	<hr/> 1,272,000
Total deficiency for the year	

The Central Railroad of Georgia and the East Tennessee are bankrupt; and, if any soundness can be found in the Richmond and Danville Company, its guaranty of the Macon and Northern and Cincinnati Extension bonds will be enforced against it in full, as neither of the mortgaged or pledged properties is yielding any revenue.

* In point of fact, a large part of this debt is being carried at 6 per cent. interest and 2 1-2 per cent. commission per annum. About \$100,000 per annum should be added to fixed charges to cover this extra expense.

(39) It is worth while to follow these calculations out a little further and to ascertain just what would be necessary in order to hold the Richmond and Danville system together, if relations between it and the Terminal Co. were *completely severed*. Under these circumstances, the Richmond and Danville Company, or its receivers, would have to meet fixed charges as shown in the following table:

Richmond and Danville System.

Name of Road.	Miles	Held by Public.		Held by Terminal Company.	
		Bonds and Guaranteed Stocks.	Annual Fixed Payment.	Bonds and Guaranteed Stocks.	Annual Fixed Payment.
Richmond and Danville.....	152				
Consolidated 6s 1915.....		\$5,007,000	\$359,520		
Debenture 6s.....		3,308,000	202,080		
Consolidated 5s 1936.....		3,041,000	152,050		
Equipment 5s.....		1,403,000	71,050		
Sinking Funds.....			68,280	\$726,000	\$13,560
Piedmont.....	50				29,040
State University.....	11				
Milton and Sutherland.....	7				
Richmond, York River and Chesapeake.....	39				
First Mortgage.....		400,000	32,000		
Second Mortgage.....		500,000	30,000		
Stock Guaranteed.....		497,500	29,850		
North Carolina.....	223				
Stock Rental.....		4,000,000	260,000		
Atlanta and Charlotte Air Line.....	269				
First Mortgage preference.....		500,000	35,000		
Income Mortgage.....		4,250,000	207,500		
Stock Guaranteed at 1%.....		750,000	45,000		
Washington, Ohio and Western.....	50	1,700,000	102,000		
First Mortgage.....		1,000,000	40,000		
Northwestern North Carolina.....	100			625,000	
First Mortgage.....		1,333,000	79,800		
Clarksville and North Carolina.....	7.5				
First Mortgage.....		111,000	6,000		
Oxford and Clarksville.....	50				
First Mortgage.....		750,000	45,000		
Virginia Midland.....	108				
Serials.....		7,035,000	408,250		
General Mortgage.....		4,850,000	242,050		
Income Mortgage.....		10,000	600		
Charlottesville & Rapidan.....					
First Mortgage.....		421,700	25,302		
Sinking Fund.....			10,000		
Franklin & Pittsylvania.....					
First Mortgage.....		85,000	5,100		
Sinking Fund.....			1,000		
Western North Carolina.....	309				
First Consol Mtg.....		2,531,000	151,860	1,325,000	79,500
Second Mtg.....				4,110,000	240,000
Charlotte, Columbia & Augusta.....	191				
First Mortgage.....		2,000,000	140,000		
Second Mortgage.....		500,000	35,000		
First Consol. Mortgage.....		500,000	30,000		
Atlantic, Tennessee & Ohio.....	44				
First Mortgage.....		150,000	9,000		
Stock.....		400,000	16,000		
Chester & Lenoir Ry.....	99				
First Mortgage.....		262,500	18,375	87,000	6,090
Stock.....		345,400	5,151		

(40)	Name of Road.	Miles	Held by Public.		Held by Terminal Company.	
			Bonds and Guar- anteed Stocks.	Annual Fixed Payment.	Bonds and Guar- anteed Stocks.	Annual Fixed Payment.
	Cheraw & Chester R. R.....	29				
	First Mortgage.....		\$ 100,000	\$ 7,000	\$ 50,000	\$3,500
	Stock.....		222,950	3,344		
	Columbia & Greenville R. R..	164				
	First Mortgage.....		2,000,000	120,000		
	Second Mortgage.....		1,000,000	60,000		
	Blue Ridge R. R.....	32				
	Laurens R. R.....	32				
	Spartanburg, Union & Colum- bia R. R.....	68				
	First Mortgage.....		1,000,000	50,000		
	Georgia Pacific Ry.....	500.5				
	First Mortgage.....		5,000,000	330,000		
	Income Mortgage.....		100,000	0,540		
	Consolidated 2d Mtge.....		4,610,000	230,500		
	Consolidated Income Mtge...		3,207,000			
	Equipment 58.....		1,052,000	52,000		
	Equipment 68.....				47,000	2,820
	Sinking Funds.....			80,970		1,880
	Statesville & Western.....	20				
	Oxford & Henderson.....	13				
	Richmond & Mecklenburg....	31.5				
	First Mortgage.....		315,000	18,000	160,000	9,000
	Second Mortgage.....					
	Northeastern R. R. of Georgia	40				
	First Mortgage.....		200,000	18,200		
	General Mortgage.....				315,000	18,000
	High Point, Randleman, Ashe- boro & Southern.....	27				
	Asheville & Spartanburg.....	70				
	First Mortgage.....		500,000	30,000	215,000	12,000
	Second Mortgage.....					
	Danville & Western.....	70				
	First Mortgage.....		500,000	25,000		
	North Carolina Midland.....	26				
	Elberton Air Line.....	51				
	Lawrenceville.....	10				
	Koswell.....	10				
	First Mortgage.....		32,500	2,275		
	Hartwell.....	10				
	First Mortgage.....		3,800	380		
	Yadkin.....	41				
	Baltimore, Chesapeake & Rich- mond Steamboat Co.....	200				
	R. E. Bonds.....		140,000	8,400		
	Sinking Fund.....			14,200		
	Macon & Northern.....	107				
	First Mortgage.....		2,200,000	90,000		
	Receivers' Certificates and Floating Debt.....		7,000,000	420,000		
				\$4,514,235		\$454,390

Fixed charges on bonds, &c., held by public..... \$4,542,235 00

Fixed charges on bonds held by Terminal Company..... 454,390 00

Total fixed charges..... \$4,996,625 00

Estimated net earnings *without deduction*
for insufficient maintenance..... 3,650,000 00

Deficit for the year..... \$1,346,625 25

In this calculation, the liability on the \$6,000,000 East Tennessee-Richmond and Danville joint bonds is not included. It will also be noticed that interest on floating (41) debt is figured at 6 per cent., although the Company is paying on most of it 6 per cent. interest and 2½ per cent. commission per annum, so that, in point of fact, about \$100,000 should be added to the fixed charges for this item.

Furthermore, this calculation allows nothing for expenditures for new construction. Provision of funds for such use is essential; and, in the absence of other resources, it may be presumed that additional Receiver's certificates will have to be issued, a course that will necessarily add to the fixed charges.

In whatever way the matter is approached, it seems *perfectly evident* that the Richmond and Danville system cannot be held together except by thorough reorganization.

(b)

The situation of the East Tennessee system, without reorganization, is as follows:

Net earnings estimated, 1892-1893 (<i>without deduction for insufficient maintenance</i>).....		\$3,350,000
Interest on bonds held by public and rentals, say.....	\$4,005,000	
Interest on bonds held by Terminal Co. and Richmond and Danville.....	52,000	
Interest on equipment notes.....	80,000	
Interest on Receiver's obligations and floating debt secured by bonds, say.....	180,000	
		<hr/> 4,317,000
Add annual payments account of equipment not est..		\$667,000
		<hr/> 300,000
Total deficiency for the year.....		<hr/> \$1,267,000

An impression has prevailed that only the recently issued "junior" bonds on the East Tennessee System need readjustment. Of these, there are outstanding \$3,920,000 First Extension and General Mortgage bonds held by the public and \$1,050,000 First Extension and General Mortgage bonds held by the R. & D. and Terminal, making in all \$4,970,000. The interest on this total at 5 per cent. is only \$248,500 annually. Assuming, furthermore, that such of these bonds as are pledged for the floating debt could be disregarded, a further saving *might* result of, say \$100,000 per annum. This would make a total saving, under the most favorable circumstances, of only \$348,500, which is, of course, entirely inadequate. The trouble in the East Tennessee is largely explained by the fact that,

for some years back, the property and its equipment have been allowed to deteriorate physically, and this has now been followed by the financial collapse *inevitable* from such a course.

(c)

The foregoing calculations are based upon the assumption that the Richmond and Danville Company and East Tennessee Company will be able to get together in cash, available towards paying their fixed charges, every dollar of their nominal net revenue and that each company can be brought into credit good enough to fund its floating debt and to continue borrowing at six per cent. Neither of them can get any credit at all until its actual and contingent charges are reduced to a sum reasonably within its earnings, nor until it can show that it will be able to provide for its future legitimate construction needs and to (42) develop its business. This is what the reorganization seeks to accomplish: (1) by eliminating the Terminal Company as a separate factor in the situation; (2) by reducing the annual interest charge for existing bonds held by the public, on the Richmond and Danville and East Tennessee systems, and (3) by raising a large sum, viz.: about \$16,500,000, by stock assessments and sale of new stock, thus avoiding all fixed charge therefor. This sum is sufficient to pay off the existing floating debts which now involve a fixed charge (and will release the bonds now pledged for same), and also to provide means necessary for the general purposes of the new company.

With a basis of credit thus established, the scheme seeks to make such provision for the future as will enable the New Company to develop its business and increase the net results—all of which cannot be done by any less comprehensive reorganization.

New York, May 1st, 1893.

(43) AN AGREEMENT, made this first day of May, 1893, between C. H. Coster, George Sherman and Anthony J. Thomas (hereinafter called the Committee), *parties of the first part*, and all All Holders of stocks or bonds of the Richmond and West Point Terminal Railway and Warehouse Company (hereinafter called the "Terminal Company") or of stocks bonds or other obligations, secured or unsecured, of various corporations in which the Terminal Company has, or assumes to have, an interest, direct or indirect (hereafter called "subordinate companies"), who have become or shall become parties to this agreement, *parties of the second part*:

The foregoing plan having been proposed for the reorganization of the affairs of the Terminal Company and its subordinate companies, as above described:

This agreement witnesseth: That each and every person or party who shall have deposited with the Depositaries hereunder any stock, bond or other obligation of the Terminal Company, or of any subordinate company, hereby promises and agrees to and with every other party hereto and with the Depositaries and each and every other party, and the Depositaries do reciprocally promise and agree as follows:

First. A printed copy of this agreement, certified by a majority of the Committee and lodged with the Depositaries, shall be held and taken as the original agreement. The said plan is, and shall be, taken to be a part of this agreement, with the same effect as though each and every provision thereof had been embodied herein, and said plan and this agreement shall be read as parts of one and the same paper. Any deposit of securities hereunder, and the acceptance of any certificate issued therefor, shall constitute an agreement in the terms hereof (subject to the provisions of the certificate issued therefor) between the Committee and all persons claiming in respect of any such deposit, and all such persons shall be embraced under the term "Depositor," whenever used herein. All rights in respect of any such deposit shall be such only as shall be evidenced by the certificate to be issued hereunder at the time of such deposit, and thereafter the owner of such certificate, or of any certificate or certificates issued in lieu thereof or in exchange therefor, shall be entitled to have and exercise all the rights of the original Depositor as to the securities therein mentioned. By accepting any such certificate, every recipient or holder thereof shall thereby become party to this agreement with the same force and effect as though an actual subscriber hereto under seal.

The term Depositor, whenever used herein, is intended and shall be construed to include not only persons acting in their own right, but also, trustees, guardians, committees, agents, and all persons acting in a representative or fiduciary capacity, and those represented by or claiming under them, and partnerships, associations, joint stock companies and corporations. Until a deposit shall have been fully completed hereunder and a certificate therefor actually issued to the Depositor, neither he nor any one claiming under him shall have any right hereunder, and then only as specified in such certificate. The Depositaries shall receive the deposited stocks, bonds and other securities and shall deliver the same to the Central Trust Company of New York, as Custodian, to hold the same subject to the order and control of the Committee, as required by the Committee for the purposes of reorganization.

Second. The Depositors hereunder hereby request the Committee to endeavor to carry into practical operation this agreement, including the foregoing plan of reorganization, in its entirety or in part, to such extent and in such (44) manner and with such additions, exceptions and modifications as the Committee shall deem to be for the best interests of the depositors or of the properties finally embraced in the plan of reorganization. In consideration of the assent of the members of the Committee to this request and of their assumption of the trust hereby created or proposed and the contemplated performance and action of the Committee hereunder, each and every Depositor does hereby appoint and constitute the Committee his trustee and agent to carry out said plan of reorganization in all respects, and does hereby sell, assign, transfer and set over to the said parties of the first part as joint tenants, and not as tenants in common, to the survivor and survivors of them and to their successors, as a Committee *in trust* for the purposes of this agreement, each and every security or obligation or evidence thereof deposited hereunder.

Every Depositor, for himself and not for any other Depositor, to the extent of his interest in any and all deposits hereunder, hereby gives to and vests in the Committee all the power and authority of an owner of the stock, bonds, securities and obligations deposited hereunder, with full right to transfer the same into its own name, as a Committee or into the name of any other person or persons whom the Committee may select; to vote thereon at any meeting of stockholders or bondholders or creditors; to use every such stock, bond, security or obligation as

fully and to the same extent as the owner or holder thereof; including power to declare due the principle of any bond or other obligation deposited hereunder, and to revoke any such declaration whenever made; to call or attend, and either in person or by proxy to vote at any and all meetings of stockholders or bondholders or creditors of any corporation however convened; to terminate or to seek to dissolve or modify any trust or lease, in whole or in part; to apply for the determination of the validity thereof, or for the removal of any trustees or the substitution of other trustees, or to take any other steps in respect of any trust or lease or under any provision thereof; to give all bonds of indemnity or other bonds, and to charge therewith the securities deposited hereunder or any part thereof, if the Committee shall so deem necessary or expedient in carrying out the purposes hereof; to institute or to become parties to any legal proceedings which could be instituted by any Depositor or any corporation, or any officer of any corporation whose stock or bonds or other obligations (or any part thereof) are deposited hereunder, and to participate in any and all legal proceedings now existing; to apply for receivers, or the removal of receivers and the substitution of other receivers, or for the termination of any receivership and the delivery of any property to its owners; to enter into settlement of any litigation now or at any time existing or threatened, in whole or in part, with plenary power to enter into arrangements for decrees, or for facilitating or hastening the course of litigation, or in any way to promote the purposes of the Committee; to do whatever, in the judgment of the Committee, may be necessary to promote or to procure joint or separate sales of any property or franchises herein concerned, wherever situated, whether or not embraced within the jurisdiction of any one or more courts; to adjourn the sale of any property or franchises, or of any portion or lot thereof at discretion; to bid, or to refrain from bidding, at any sale, either public or private, either in separate lots or as a whole, for any property or franchise or any part thereof, whether or not owned, controlled or covered by any deposited security, including or excluding any particular rolling stock, or other property, real or personal, and at, before, or after, any such sale, to arrange and agree for the resale of any portion of the property which the Committee, may decide to sell rather than to retain; to hold any property or franchises purchased by the Committee, either in its name or in the name of persons or corporations by it chosen for the purposes of this agreement, and to apply any security deposited hereunder in satisfaction of any bid or towards ob-

taining funds for the satisfaction thereof; it being understood that the term property and franchises includes any and all railroads, railroad and other transportation lines, leaseholds, or corporations, or interests therein, in which the Terminal Company or any subordinate company has any interest of any kind whatever, direct or indirect. The (45) amount to be bid or paid by the Committee for any property or franchises shall be absolutely discretionary with it; and, in case of the sale to others of any property or franchise, the Committee may receive out of the proceeds of such sale or otherwise any dividend in any form accruing on any securities held by it.

Third. For the purpose of carrying the reorganization into effect and to provide suitable agencies for the operation of the properties, the Committee may procure the organization of one or more new companies, or may adopt and use any existing or future corporations or any corporate powers thereof, or may pursue both courses, and it may also procure the consolidation, union, merger, lease or sale of one or more corporations, including the Terminal Company, or of any subordinate company, in such manner and with such parties as it shall select, and it may make conveyances of any property or any part thereof for such consideration in stocks, bonds, cash, securities or otherwise as it may from time to time determine.

Fourth. The Committee may construe this agreement (including the plan of reorganization); and its construction thereof or action thereunder, in good faith, shall be final and conclusive. It may supply any defect or omission, or reconcile any inconsistency in such manner and to such extent as shall be necessary to carry out the same properly and effectively, and it shall be the judge of such necessity. It shall be sole and final judge as to when and whether the assent of enough parties interested in the Terminal Company or the subordinate companies shall have been obtained to this agreement, or to any part hereof, to warrant it in carrying the same or any part into effect, and it shall have power whenever it shall deem proper, to abandon or to alter, modify or depart from, the plan of reorganization, or any part thereof. It may at any time or times after any such partial abandonment, restore to the plan any abandoned part or parts thereof, and may seek to carry same into effect, as fully as if such part or parts had not been abandoned. It may also attempt to carry the plan into effect rather than abandon or modify the same, even though it be manifest that as carried out the plan must in substantial particulars and results depart from the

original plan or from any part or estimate thereof. But in case of intentional changes or modifications by departure from the plan or by alteration or modification thereof, which in the judgment of the Committee shall materially effect any of the several classes of Depositors, or their mutual relations, a copy of the plan as modified by such departure, alteration or modification, shall be filed with the Depositaries, and notice of the fact of such filing shall be given as hereafter provided in Article Twelfth; and if holders of one-sixth in amount of the outstanding receipts for any particular class or classes of securities affected thereby shall, within two weeks after final publication, enter with the Depositaries written objections in such reasonable form as they may prescribe, the Committee shall either abandon such changes or modifications, or give like notice of the filing of such objection, whereupon the several holders of receipts for deposited securities of any particular class or classes as to which Depositors of one-sixth part thereof shall have entered such objection, may, within two weeks after the final publication of such second notice, surrender their respective receipts therefor and withdraw securities of such particular class or classes, or the substitutes therefor then under the control of the Committee, to the amount indicated in such receipt; and every Depositor of securities of any such particular class or classes not so surrendering and withdrawing shall be deemed to have assented to the proposed changes or modifications, and, whether or not otherwise objecting, shall be bound thereby. Every Depositor of securities of any class as to which holders of receipts to the extent of at least one-sixth part thereof shall not have filed such written objection, shall be bound by the proposed changes or modifications. Any changes or modifications finally made by the Committee shall be part of this agreement; and all provisions and references concerning the plan shall apply to the plan whenever so modified and amended. In case the Committee shall finally abandon the entire plan, the stock, bonds and securities deposited hereunder, or any stock, bonds, securities, or claims representative thereof, then under the control of the Committee, shall be delivered to the several Depositors in (46) amounts representing their respective interest, upon surrender of their respective receipts and payment of such actual expenses as shall have been incurred by the Committee, which shall have power to determine and to apportion upon the several classes of securities deposited hereunder the ratable share of expense to be borne by such security.

In case of the abandonment of any property, or properties, at any time embraced in the plan, but not involving

its entire abandonment, the stock, bonds and securities relating to such property or properties, and deposited on account thereof, or the substitutes therefor, then under control of the Committee, may be returned in like manner.

The Committee shall not make any change of plan requiring any holder of stock, bonds or securities deposited under the plan, to accept therefor an amount of stock or bonds of the New Company, less than the amount now fixed in the plan.

The Committee may limit the time of acceptance of this agreement, and in its discretion may extend such time either generally or in special instances, upon such terms as it shall deem fit. The Committee in its discretion may fix and after the time when and within which any assessment or subscription shall be paid, and may declare forfeited and forfeit the rights of any Depositor who shall failed to pay any and all assessments or subscriptions within such time as the Committee shall have prescribed, and may dispose of the same as provided in said plan.

Fifth. The Committee may proceed under this agreement, or any part thereof, with or without foreclosure, and may exercise any power even after foreclosure sale. If satisfactory settlement can be made with any creditor of any subordinate company, whereby existing bonds or stocks can be extended or adjusted, or whereby there may be substituted other securities which, in the opinion of the Committee, shall be sufficiently similar in character, or effect, to warrant their substitution for the purposes hereof, the Committee may make such adjustment or extension or substitution, instead of delivering securities in any such case provided to be delivered by the plan of reorganization. In case any separate plan shall, in the opinion of the Committee, become necessary or expedient to effect the reorganization of any subordinate company, or in case any other parties shall undertake or attempt to reorganize any subordinate company, the Committee may promote and participate in any such reorganization, and may deposit thereunder any securities thereby affected.

In case of any claim, lien or obligation not herein fully provided for and affecting the Terminal Company or any subordinate company, or any property, or franchises thereof, the Committee may from time to time (subject, however, to Article Sixth hereof) make compromise in respect thereto or provision therefor as it may deem suitable, using therefor any securities not expressly required for settlement with Depositors or not expressly reserved for liens or obligations specified in the plan; but the total amount of new securities to be created as set forth in the plan, shall not be thereby increased.

Any action contemplated in the plan or agreement to be performed on or after completion and reorganization may be taken by the Committee at any time when it shall deem the reorganization advanced sufficiently to justify such course, and the Committee may defer, as may be necessary, the performance of any provision of the plan or agreement, or may refer such performance to the New Company.

Sixth. The Committee may from time to time make contracts with any person, syndicate or corporation, for the purpose of carrying this agreement into effect. The Committee may employ counsel, agents and all necessary assistance, and may incur and discharge any and all expenses by the Committee deemed reasonable for the purposes of this agreement. Their selection of Messrs. Drexel, Morgan & Co as Depositaries, and the agreement to pay them the compensation provided in the plan are hereby ratified and confirmed. The Committee may prescribe the form or all securities and of all instruments at (47) any time to be issued or entered into under this agreement. It may create and provide for all necessary trusts, and may nominate and appoint trustees thereunder. It may, at public or private sale, or otherwise, dispose of any securities of the new company left in its hands because of any such failure to make deposits hereunder. In so disposing of any such new securities, thus left on its hands, the Committee may use the same or the proceeds thereof for the purpose of carrying out the reorganization in such manner as it may deem expedient and advisable. But, neither the Committee nor the new company shall dispose of any such securities left in its hands because of any failure to deposit any bonds or claims continuing as outstanding liens on the property controlled by the new company, nor of any such securities intended, under the plan, to provide for securities or claims on properties not embraced in the plan as carried out; although, when authorized by the Depositaries and Stock Trustees, the Committee may use, or may arrange to use (so far as necessary) any such remaining securities for the acquisition of any line or lines of railway which to them shall seem a satisfactory substitute for any property not embraced in the plan as carried out. At the time of the creation of the new securities or as soon thereafter as may be, the Committee shall take such action (either by creating lesser amounts of securities, or otherwise) as may deem necessary to guard against the issue of such particular securities in any manner or to any extent inconsistent with the purposes of the plan.

Seventh. The Committee shall act with the assent of a majority of its members, expressed from time to time either at a meeting or in writing with or without meeting. It may adopt its own rules of procedure, and may fill vacancies in, and add to, its number. In case of absence, any member may vote by any other member as his proxy. Neither the Committee nor the Depositaries assume any personal responsibility for the execution of the plan, or of this agreement, or any part of either, nor for the result of any steps taken or acts done for the purposes thereof, the members of the Committee, however, undertaking in good faith to endeavor to execute the same. Neither the Committee, nor the Depositaries, shall be personally liable for any act or omission of any agent or employee selected in good faith, nor for any loss not resulting from their own malfeasance or willful neglect; and no member of the Committee shall in any case be liable for the act or omission of any other member. Any member of the Committee may at any time resign by giving notice in writing to a majority of the remaining members, and the Committee may give full release and discharge to any such member, or to the personal representative of any deceased member. The Committee may act through sub-committees or agents and may delegate any authority, as well as discretion, to any such sub-committee or agent; its members shall be allowed a reasonable compensation for their services hereunder. The Committee, or the Depositaries, or any present or future member of either, may be member of the Committee or of the Depositaries, or of the "Stock Trustees," and may be or become pecuniarily interested in any contracts, property or matters which this agreement concerns, including any syndicate agreement, whether or not mentioned in the plan. Any official direction given by the Committee shall be full and sufficient authority for any action of the Custodian, or for any sub-committee or agent, in conformity therewith.

Eighth. The Committee may negotiate and agree with any and all companies or persons for obtaining or granting running powers, terminal facilities, exchanges of property, or any other conveniences which it may deem necessary or desirable to obtain or to grant, and may make contracts therefor binding upon such new company; and generally may ratify and make such purchases, contracts, stipulations or arrangements as will in its opinion operate directly or indirectly to aid in the preservation, improvement, development or protection of any property now constituting the Terminal system, or which the Terminal Company or

any subordinate company has contracted to acquire, or to prevent or avoid opposition to, or interference with, the successful execution hereof.

Ninth. The accounts of the Committee shall be filed with the Board of Directors of the new company within one year after its organization shall have been completed, (48) unless a longer time be granted by the said Board, whereupon the Committee shall be discharged. The accounts, when audited and approved by such Board of Directors, shall be final, binding and conclusive upon all parties having any interest therein. The acceptance of new securities by any Depositor shall estop such Depositor from questioning the conformity of such securities, as to character, or otherwise, with any provision of said plan, and the acceptance of new securities by a majority in amount of any class of depositors shall so estop all Depositors of such class.

Tenth. The enumeration of specific powers hereby conferred shall not be construed to limit or to restrict general powers herein conferred or intended so to be; and it is hereby distinctly declared that it is intended to confer on the Committee, and each Depositor hereunder hereby confers on the Committee, in respect of all securities deposited or to be deposited, and in all other respects, any and all powers necessary or expedient, or which the Committee may deem necessary or expedient in or towards carrying out or promoting the purposes of this agreement in any respect, even though any such power be apparently of a character not now contemplated; and the Committee may exercise any and every such power as fully and effectively as if the same were herein distinctly specified, and as often as, for any cause or reason, it may deem expedient. And it is further understood and agreed that the methods to be adopted for or towards carrying out this agreement shall be entirely discretionary with the Committee.

Neither the Committee, the bondholders, the creditors or the parties interested in the Terminal Company, nor those interested in any subordinate company, by executing this agreement or by becoming parties hereto, or by reason of any decree of foreclosure or other decree that may be rendered or any purchase thereunder, waive or surrender any legal right or lien in favor of the stockholders or creditors secured or unsecured, of the said Terminal Company, or of any subordinate company. Any purchase or purchases by or on behalf of the Committee under any decree shall be for the sole and exclusive benefit of the mort-

gage, lien or other creditors for whose benefit such decree may be rendered to the extent of their legal interest therein, to the end that the new company shall acquire under such decree or decrees, and the purchases thereunder, the titles to the property so purchased, free from all claims of stockholders and other creditors, as against which such mortgage or lien creditors reserve all legal rights.

Eleventh. No estimate, statement, explanation or suggestion contained in the foregoing plan is intended or is to be accepted as a representation or warranty, or as a binding condition of deposit thereunder, and no defect or error therein shall release any deposit thereunder except by consent of the Committee. Any moneys paid under or with reference to said plan or this agreement shall be paid over by the Depositaries to the Committee, and shall be applicable for any of the purposes of the plan and agreement as may be most convenient, and as may from time to time be determined by the Committee, whose determination as to the propriety and purposes of any such application shall be final, and nothing in said plan shall be understood as limiting or requiring the application of specific moneys to specific purposes. No liability in respect or in favor of any obligations, securities or debts not called for and accepted on deposit hereunder is assumed hereunder, or by or for any new company, nor is any trust in their favor created or impressed upon any deposit or payment hereunder, or upon any securities to be issued under the plan. Any obligation in the nature of floating debt against any property embraced in the plan, either as proposed or as carried out, or any securities held as collateral for any such obligation may be acquired or extinguished by the Committee at such times, in such manner and upon such terms as it may deem proper for the purposes of reorganization, but nothing contained in the plan or in this agreement is intended to constitute, nor shall it constitute, any liability or trust in favor or respect of any such obligation for floating debt.

Twelfth. All calls for the deposit of bonds and stocks, for the surrender of certificates, and all other notices hereunder or under any agreement contemplated herein, shall, (49) except when otherwise provided, be inserted in the New York "Times" and the New York "Tribune," or in two other daily papers of general circulation published in the City of New York, twice in each week for two successive weeks, and when so published shall be taken and considered as though personally served on the subscribing parties hereto and upon all parties becoming bound hereby, as of the respective dates of insertion thereof, and such

publication shall be the only notice required to be given under any provision of this agreement, or of the various agreements herein contemplated.

Thirteenth. This agreement shall bind the Committee and their successors in office appointed in accordance herewith and the depositors hereunder, their and each of their heirs, executors, administrators, successors and assigns.

In witness whereof, a majority of the members of the Committee have hereunto signed their names and all other parties hereto have deposited securities as above set forth.

WRIT OF CERTIORARI.UNITED STATES OF AMERICA, *v* ss :

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Fourth Circuit—Greeting :

Being informed that there is now pending before you a suit in which Southern Railway Company is appellant and Carnegie Steel Company, Limited, is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the Circuit Court of the United States for the Eastern District of Virginia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 12th day of January, in the year of our Lord one thousand eight hundred and ninety-seven.

(Signed.) JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

(Endorsed :)

SUPREME COURT OF THE UNITED STATES.

No. 676. October Term, 1896.

Southern Railway Company }
vs. }
Carnegie Steel Co., Limited. }

WRIT OF CERTIORARI.

The execution of the within writ appears from the schedules hereunto annexed.

(Sgd.) HENRY T. MELONEY,
Clk. U. S. Ct. Ct. of Appeals, 4th Ct.

UNITED STATES OF AMERICA.

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do make return of the annexed writ of certiorari, issued out of the

Supreme Court of the United States, in the cause therein entitled, on the 12th day of January, 1897, by annexing hereto a certified copy of the stipulation of the attorneys of record, that the certified transcript of the record of said cause, filed in the Clerk's office of the Supreme Court of the United States on the 21st day of December, 1896, with the petition for the said writ of certiorari may be received and considered as the transcript of the record on the return to said writ of certiorari.

{ Seal of the Court. }	In testimony whereof I hereto set my hand and affix the seal of the said Circuit Court of Appeals, at Richmond, on this 4th day of February, A. D. 1897.
------------------------------	---

(Signed.) HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, Fourth Circuit.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE FOURTH CIRCUIT.

The Southern Railway Company, Purchaser,	<i>vs.</i>	Appellant,
The Carnegie Steel Company, Limited,		Appellee.

STIPULATION.

It is hereby stipulated by and between the attorneys of record for the respective parties in the above entitled cause that the certified transcript of the record of said cause filed in the Clerk's Office of the Supreme Court of the United States on the 21st day of December, 1896, with the petition for a writ of certiorari herein, may be received and considered as the transcript of the record on the return to the writ of certiorari granted on the 12th day of January, 1897.

(Signed) HENRY CRAWFORD,
For Southern Railway Company, Purchaser.

(Signed) NICHOLAS P. BOND,
Sol. for the Carnegie Steel Company, Limited.
Feb. 1, 1897.

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify

CARNEGIE STEEL CO., LIMITED, APPELLEE. 567

that the foregoing is a true copy of the original stipulation filed and remaining of record in the above entitled cause.



In testimony whereof I hereto set my hand and affix the seal of the said Circuit Court of Appeals at Richmond on this 4th day of February, A. D., 1897.

HENRY T. MELONEY, Ck.

(Endorsed :)

Case No. 16,455 Supreme Court of the United States, October term 1896. Term No. 676. Southern Railway Co., appellant, *vs.* Carnegie Steel Co., Limited. Writ of certiorari and return thereto. Filed February 5, 1897.

278.
876

VOL. 100, PART 1
DEC. 1, 1896
JAMES H. MCKENNEY
CLERK

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1896.

SOUTHERN RAILWAY COMPANY,
Appellant,

vs.

CARNEGIE STEEL COMPANY (LIMITED),
Appellee.

Petition of Appellant for a Writ of Certiorari to
the U. S. Circuit Court of Appeals for
the Fourth Circuit.

HENRY CRAWFORD,
WILLIS B. SMITH,
Solicitors.

611

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

SOUTHERN RAILWAY COMPANY,

APPELLANT,

VS.

CARNEGIE STEEL COMPANY (LIMITED),

APPELLEE.

Petition of the Southern Railway Company for a writ of certiorari to bring up the decree of the Circuit Court of Appeals for the Fourth Circuit.

TO THE HONORABLE JUDGES OF THE SUPREME COURT OF
THE UNITED STATES :

Your petitioner, the Southern Railway Company, respectfully shows to the Court as follows :

On June 16, 1892, in a suit brought by William P. Clyde and others, general creditors, alleging insolvency, the Circuit Court of the United States for the Eastern District of Virginia appointed Receivers of all the Richmond and Danville Railroad system.

The only railroad it owned was its charter line from Richmond to Danville, in Virginia. It also leased, operated and controlled as a part of its system a large number of railroads in Virginia, North Carolina, South Carolina, Georgia, Alabama and Mississippi and the District of Columbia.

The order appointing the Receivers directed them to continue to operate all the leased lines until the Court should order otherwise.

It also required them to pay, as preferential charges, out of the current earnings, all pay-rolls and operating supply vouchers incurred within six months prior to their appointment.

By subsequent order, on June 28th, 1892, \$1,000,000 Receivers' first-lien certificates were issued, and the proceeds used to pay such ante-receivership six months' debts.

The order made such certificates a lien on the railroad prior to all mortgages, and was in express terms allowed, for the purpose of enabling the Receivers to use their current income to pay rentals on the leased lines.

No motion was ever made by any creditor to modify either of such orders.

On August 16th, 1892, Special Masters were appointed to take proof of corporate debts.

The railroad company had previously executed three mortgages to secure \$6,000,000 first, \$4,000,000 debenture and \$4,527,000 consolidated bonds, respectively.

None of these mortgagees were parties to the Clyde suit when brought and neither of such liens was then in default.

The consolidated mortgage was executed October 22, 1886, to the Central Trust Company of New York. It covered the owned road from Richmond to Danville, its estate in the Piedmont Railroad in North Carolina and its leaseholds or rights under operating contracts with the York River, North Carolina, Atlanta Air Line, Virginia Midland, Western North Carolina, Charlotte, Columbia and Augusta, and Columbia and Greenville Railroads. Also all such first mortgage bonds issued by other railroad companies, thereafter leased or acquired by the mortgagor, which might be deposited with the mortgagee, and all such Richmond and Danville debenture bonds secured by its mortgage of 1882 as should be deposited in exchange for consolidated bonds.

The final decree finds that \$4,527,000 of consolidated bonds had been issued for value. Of these \$1,351,000 were in exchange for deposited debenture bonds, \$350,000 were for equipment, \$2,826,000 were to acquire \$2,854,000 first mortgage bonds of the several independent roads, as specified. Such debenture and mortgage bonds of third companies were lodged with the trustee and constituted an important part of the security covered by the consolidated mortgage.

On October 14, 1892, the Carnegie Steel Company (Limited) filed with the special Masters in the general receivership suit a claim upon five notes executed by the defendant Railroad Company for rails sold.

No claim of lien or preference was made.

By amendment of February 24, 1894, it alleged that by reason of a wrongful diversion of earnings to the payment of bonded interest the claim was entitled to an equitable preference over the consolidated mortgage then in process of foreclosure.

By an amendment of March 12, 1894, it was also alleged that, under Section 2485 of the Code of Virginia, the claim was a prior statutory lien upon the franchises, gross earnings, real and personal property of the defendant railroad company.

This debt arose under a written contract executed June 10, 1891, between the steel company and the mortgagor railroad. The latter agreed to buy steel rails for \$30 a ton payable in the buyer's notes at four months, without interest, with a debtor privilege of two additional renewals of three months each.

The rails were to be delivered to the purchaser in Pennsylvania and there was no recital or covenant whereby they were to be laid on any particular road in the six States wherein the owned, leased and operated system was situate.

The uncontradicted testimony was, that of the total deliveries of 4,203 tons, only about 175 tons were actually laid in the railroad between Richmond and Danville. The remainder were laid in other roads in Georgia, North Carolina, Virginia, Alabama and Mississippi.

The outstanding notes evidencing the claim aggregated \$125,067.39 matured after the receivership and were second, third and fourth renewals of the original paper.

No interest was paid upon the debenture or the consolidated mortgage bonds at any time during the Receivership or foreclosure. All interest paid upon senior main-line and branch bonds was paid under Court orders requiring such payment, to which no creditor objected.

In July, 1893, the Central Trust Company brought sought to foreclose the consolidated mortgage.

On the mortgagee's motion, the Court appointed a new set of Receivers, and ordered those appointed June, 1892, in the general creditors' suit to surrender possession. The mortgagee Receivers were to take over the assets and balances of the original Receivers, and were required to pay all their just debts and liabilities.

On the closing of the accounts of the original receivership there was a net deficit of several hundred thousand dollars which was assumed and paid out of the income received by the mortgagee receivership.

In the foreclosure suit the Court made no fresh order as to the appropriation of income to preferential claims, except that it was provided that "nothing in this order contained shall be construed to vacate any of the orders heretofore entered in the case of William P. Clyde and others, but the Court reserves full power to act upon the Master's report, filed in the said cause, and in said cause to adjudge and decree upon the rights of creditors asserting a claim against the property of the said railroad company or income thereof in preference to the mortgage debt thereof by orders to be entered in the said suit of William P. Clyde and others upon notice to parties, with like effect upon the mortgage property and income, as if the orders were entered in this cause."

At that time the orders of record in the Clyde suit expressly required the payment of the rental on leased lines by the Receivers and restricted any preference against earnings to such claims as were incurred within the six months immediately preceding the first Receivership.

No creditor had ever moved to enlarge that limit, and no claim for any preference was filed by the steel

company until long after the foreclosure suit was brought.

On February 17, 1894, on the application of the appellee, the original Receivership suit was consolidated with the foreclosure action.

During the mortgagee's receivership, the foreclosing consolidated bondholders received no interest. The total earnings were not nearly sufficient to meet the operating expenses and interest on prior bonds. The deficit was paid out of the sale proceeds.

In April, 1894, a final decree was entered foreclosing the consolidated mortgage and ordering the sale in one parcel of all the railroad, leaseholds, contract rights and deposited securities.

Power was therein reserved to order the purchaser to pay all claims which it should thereafter "adjudge to be prior in lien or superior in equity to the mortgage foreclosed in this suit."

All the mortgaged railroad and other property was sold as a unit to the petitioner for the sum of \$2,020,000.

The sale was confirmed, conveyance executed and the petitioner let into possession.

In May, 1894, the Special Masters filed their report upon the intervention of the steel company.

They found that the claim was not entitled to any equitable preference upon the Receiver's income or the railroad, but that under the Virginia Code it was a statutory lien upon the sale proceeds prior to \$2,906,000, but subordinate to \$1,621,000 consolidated bonds.

Both parties excepted.

The Circuit Court on final hearing allowed a decree, finding that the railroad company owed the appellee \$125,067.39 principal and \$29,828.58 interest for steel rails sold and adjudging that the steel company, under

the statutes of Virginia, was entitled to a priority of payment out of the sale proceeds over \$2,906,000 of the consolidated bonds; also, that the receivership earnings, which should have been used for the payment of current expenses, including the claim of appellee, had been used for the benefit of mortgage creditors in a sum more than sufficient to pay such claim, and consequently was entitled to prior payment out of the sale proceeds over the entire issue of consolidated bonds.

The purchaser was therefore ordered to forthwith pay the appellee the sum of \$154,895.97 for principal and interest of its debt.

The purchaser took an appeal from this decree to the Circuit Court of Appeals for the Fourth Circuit.

The latter Court, while expressing no set opinion as to the effect of the Virginia statute, has now entered a decree affirming generally the decree of the Circuit Court, and appellant is required to pay the entire claim of the Steel Company together with interest to the date of payment.

Petitioner submits the following reasons why the said decree of affirmance should be brought here for review by this Court:

FIRST. The questions of law involved in the affirmed decree are of general importance and interest because they materially concern the recorded priorities of mortgage bondholders upon all railway property, and if allowed to remain as an unchallenged precedent will of necessity govern future decrees of foreclosure in such Circuit and elsewhere, and determine that unsecured floating debt creditors are entitled to full payment out of the proceeds of mortgaged railways

in preference to the vested contract liens of the recorded mortgagees.

SECOND. As affecting all railway property and interests therein it is of general importance to have it authoritatively decided whether after the several States have enacted valid laws creating and fixing the rank of liens upon railway property and earnings, it is competent for the Courts of the United States to allow and enforce discretionary liens thereon, which in effect abrogate such State laws and deny to these interested the rights and priorities expressly vested in them by valid statutes.

THIRD. It is of general importance that the rights and liens of mortgage bondholders upon railways in respect to claims of unsecured creditors asserting equitable priority upon earnings and sale proceeds should be determined by uniform decision so that such important interests and liens should not be rendered insecure or doubtful because of the conflicting rulings of different courts of equal authority.

The opinion and decree of affirmance involved in this application is in direct conflict with the rulings of other courts of appeal and with its own previous decision.

Unless corrected by the action of this Court its present attitude will unsettle the established principles now applicable to such property.

FOURTH. The Circuit Court of Appeals failed to follow or give force or effect to the ruling and decision of this Court on the legal proposition involved, in that it erroneously decided and decreed that mortgage bond-

holders when they came to foreclose their lien ought in equity to be charged with payments made and the acts and results of a receivership obtained in a general creditor's suit when the mortgagee did not apply, and his security was not in default and he personally received no interest during such receivership.

FIFTH. The Circuit Court of Appeals failed to follow or to give force or effect to the rulings and decision of this Court on the legal proposition involved, in that it erroneously decided and decreed that the claim of a large manufacturer for \$125,000 of rails sold and delivered in Pennsylvania two years before the mortgagees' receivership on extended optional credit of at least ten months, was a creditor of the current receivership income for necessary operating supplies, or entitled to an account thereof and restitution of sums paid for interest and necessary rentals under unimpeached Court orders.

SIXTH. The Circuit Court of Appeals failed to follow or give any force and effect to the rulings and decisions of this Court on the legal proposition involved, in that it erroneously decided and decreed that interest paid upon senior mortgages during a receivership obtained by general creditors, constituted an inequitable diversion by the junior consolidated bondholders who subsequently sued to foreclose, so that the sale proceeds of their own mortgage security could be rightly taken to make restoration to the fund for unsecured creditors.

SEVENTH. The Circuit Court of Appeals erroneously decided that there had been diversion of the original receivership income as against the rights of the steel

company, and that payments made by the Court officers, under its express orders, were in law chargeable upon the security of the consolidated mortgage bondholders, and should in law be first paid out of the proceeds of foreclosure sale.

EIGHTH. As the entire mortgaged property, embracing not only the railroad, but all the \$2,844,000 of first mortgage bonds of independent railroads on which appellee had no possible lien, was sold for only \$2,020,000, and the Circuit Court decreed that the claim of the steel company was a lien under the statutes of Virginia upon the railroad and earnings inferior and subordinate to \$1,621,000 of the bonds issued under the consolidated mortgage, upon which decree the steel company failed to assign error or appeal, and which has been affirmed by the Circuit Court of Appeals, both said Courts decided erroneously in ordering payment of any part of the intervenor's claim, because they deprived the \$1,621,000 bonds and interest thereon of the statutory priority which had been expressly decreed to them out of the net proceeds of sale which were insufficient to pay them in full.

NINTH. The Circuit Court of Appeals decided erroneously and contrary to settled legal principles in affirming the decree of the Circuit Court which split the lien and priority of a single recorded mortgage securing negotiable bonds and discriminated between the bonds protected thereby in consequence of the separate date of their original issue.

TENTH. The Circuit Court of Appeals decided errone-

ously and contrary to settled legal principles in affirming the decree that steel rails laid on independent railroads in other States constituted a prior charge in equity upon the specific security of the consolidated mortgage upon the Richmond and Danville Railroad in Virginia.

ELEVENTH. The Circuit Court of Appeals decided erroneously in affirming the judgment of the Circuit Court requiring the bondholders to pay full interest upon the claim of the petitioner.

TWELFTH. The Circuit Court of Appeals decided erroneously in decreeing that the purchase by the general creditor receivership of steel rails from the appellee constituted such a diversion of the receivership income as equitably entitled the petitioner receiving such diverted income to be paid in addition an ante-receivership debt out of the sale proceeds.

Your petitioner exhibits as a part of this application a certified copy of the record, decree of affirmance and opinions of the said Circuit Court of Appeals.

The premises considered, petitioner prays that this Honorable Court will grant its writ of *certiorari* directed to the Circuit Court of Appeals for the Fourth Circuit, requiring that the record of said intervention cause in the said Court and its decree of affirmance thereof be certified to this Court, and that this Honorable Court will, thereupon proceed to correct the errors complained of, reverse the said decree and remand said cause, and give to your petitioner such other and further relief as

the nature of the case may require and to the Court may seem proper in the premises.

SOUTHERN RAILWAY CO.,
Petitioner.

HENRY CRAWFORD,
WILLIS B. SMITH,
Solicitors.

STATE, CITY AND COUNTY OF NEW YORK, ss. :

Before the undersigned, a notary public, personally comes SAMUEL SPENCER, president of the Southern Railway Company, petitioner, who, being duly sworn, deposes and says that the matters stated in the foregoing petition for *certiorari* are true as therein set forth to the best of his knowledge, information and belief.

Sworn to and subscribed be- }
fore me this twelfth day }
of December, 1896.

Henry Crawford & Willis B. Smith
Brief of Crawford & Smith for App.

Filed Dec. 21, 1896.

Supreme Court of the United States.

OCTOBER TERM, 1896.

SOUTHERN RAILWAY COMPANY,

Office Supreme Court, U. S.

FILED

DEC 21 1896

JAMES H. MCKENNEY,

Appellant.

vs.

CARNEGIE STEEL COMPANY (LIMITED),

Appellee.

Brief in Support of Appellant's Petition
for Certiorari.

HENRY CRAWFORD,

WILLIS B. SMITH,

Solicitors.

In the Supreme Court of the United States,

OCTOBER TERM, 1896.

SOUTHERN RAILWAY COMPANY,

APPELLANT,

vs.

CARNEGIE STEEL COMPANY (LIMITED),

APPELLEE.

**Brief in Support of Appellant's Petition
for Certiorari.**

The several propositions of law involved in the decision of the Circuit Court of Appeals, as shown by the record and summarized in the petition, are sufficient to entitle the appellant to the writ.

Questions of gravity and importance are involved, and the application on its face demonstrates that the reviewing power of this Court is necessary to maintain the supremacy of its own rulings and a uniformity of decision in the several Circuit Courts.

Law Ow Bew vs. U. S., 144 U. S., 58.

The decree is not only for a large sum, but relief is awarded upon grounds which will furnish a precedent

for the impairment of every railway mortgage in the country when enforcement thereof is sought.

Probably no ruling has been so frequently misapplied as that of *Fosdick vs. Schall*. When the decrees of the Circuit Courts were the subject of direct appeals here, this Court emphasized the sacredness of this species of contract lien, because "there seems to be growing an idea that the Chancellor in the exercise of his equitable powers has unlimited discretion in this matter of the displacement of vested liens."

Kneeland vs. Am. Loan Co., 136 U. S., 96.

That opinion declares the settled law in respect to this class of securities to be that "it is the exception and not the rule that such priority of liens can be displaced." It is, however, a matter of common knowledge that in actual practice the Circuit Courts, administering and foreclosing railway property, do not confine their bounty to "the few unsecured claims which, by the rulings of this Court, have been declared to have an equitable priority," but upon all kinds of theories use such a free hand in the payment of floating debt out of the sale proceeds of mortgaged railways that it is a rare exception when "the sacredness of contract obligations" is not destroyed.

Judicial respect for "the vested and contracted priority" of a railway mortgagee evaporates on the assertion of the vague generality of dealing with "a going concern."

Bondholders, out of the *corpus* of their security, are forced to restore a supposed diversion occurring during a receivership not obtained by them and from which they received no interest.

Since the direct supervision over the Circuit Courts has been vested elsewhere than here the tendency to disregard the fundamental principles announced by this Court has much increased.

In many instances the bond creditors deem it less expensive and injurious to submit to the exactions than to continue their resistance.

Such rulings thereby become dangerous and confusing precedents.

In a somewhat similar controversy this Court has, on petition, ordered up for review a decree of the Circuit Court of Appeals for the Fifth Circuit, whereby it displaced the mortgage lien in favor of a supply creditor.

The case is *Virg. & Ala. Coal Co. vs. Cent. R. R. Co. of Ga.*, No. 404 on the docket for the present Term.

The allowance of the *certiorari* in that case fully establishes that the impairment of the bondholders' recorded lien involved questions of such gravity and importance as should fitly be brought here for attentive examination.

To entitle it to the writ now sought, the burden is upon the petitioner to establish a *prima facie* case that the Circuit Court of Appeals decreed erroneously.

Besides the general common ground which was held sufficient to warrant the review of the decree in No. 404, the present application involves certain special considerations which justify the writ.

The attention of the Court will be briefly directed to the several specifications of error which are set out in the petition.

FIRST. It having been adjudged that the rail creditor had an express statutory lien under the laws of Virginia upon the railroad and earnings, the Court had no power to enforce a discretionary equitable charge which was inconsistent with the lien fixed by legislation.

In this respect the decree violates fundamental principles of law and has no precedent to support it.

Fosdick vs. Schall and kindred cases laid down certain rules for the regulation of judicial discretion in the absence of positive legislation creating and restricting liens upon railway property.

The State of Virginia unquestionably had plenary power to enact statutes declaring what claims should constitute liens upon railways and their earnings, and what priority should be awarded them as against subsisting mortgages.

Appellee sued to enforce a lien under the statute. When it was decreed to him the Court was without rightful power to invent a discretionary lien for the same debt upon the same property, of a character materially variant from the valid statute creating and restricting the right.

The function of an equity court in the enforcement of a right exclusively of statutory origin arises out of and is restricted to the specific legislation.

“Whenever the rights of parties are clearly defined
“and established by law, equity has no power to change
“or unsettle those rights or that situation, but in all
“such instances the maxim ‘*Equitas sequitur legem*’ is
“strictly applicable.”

Magniac vs. Thomson, 15 How., 281.

Hodges vs. Dixon Co., 150 U. S., 182.

“ Where a particular remedy is given by law, and
 “ that remedy is bounded and circumscribed by par-
 “ ticular rules, it would be very improper for this Court
 “ to take it up where the law leaves it and extend it
 “ further than the law allows.”

Thompson vs. Allen Co., 115 U. S., 555.

Whenever a State in the exercise of its undoubted sovereignty over property and highways within its own territory has enacted statutory regulations covering the whole subject matter of liens on railroads and their earnings and the manner in which they must be created and enforced, and the priority of such claims in respect of mortgage or other liens thereafter accrued, there is no occasion for any exercise of judicial discretion over the same subject.

Whatever the State law makes liens on property and earnings are such, and must be paid in their statutory rank if perfected and asserted in compliance with the statutory conditions. Whatever claim is not within the statutory description, or is not made effective by the statutory methods, is not a recognizable or enforceable lien, and no Court, State or Federal, possesses any jurisdiction, on some supposed principle of general equity to ignore and repeal a valid State law whereby the property rights of creditors have been thus absolutely determined.

If the State law fixes liens and priorities on railroads and their income, there can be no others born of mere judicial discretion.

The expression of one is the exclusion of all others. The sole judicial function is to administer the State law on the subject of railroad liens and priorities as it exists on the statute book, and proceed no further.

There can be no other lien, either in addition to the statute or as a substitute for it.

Trust Co. vs. K. C., &c., Ry., 53 Fed., 191.
F. L. & T. Co. vs. Candler, 18 S. E., 540.

TWO. As the decree adjudged that \$1,621,000 of the consolidated bonds had an express statutory lien prior to the claim of appellee, the Court had no rightful power to deprive them of that adjudged priority by ordering the payment of the rail claim in full out of a fund insufficient to pay such bonds.

Having actually decreed such bond priority in obedience to an express law establishing a rule of property, all judicial action in disregard thereof was prohibited.

Brine vs. Ins. Co., 96 U. S., 635.

By one part of the affirmed decree the intervenor was adjudged to be entitled only to come upon the surplus of the net sale proceeds after full satisfaction of the prior \$1,621,000 bonds and interest.

The record shows there was no surplus.

The sale was for \$2,020,000, including the Washington property, leaseholds in roads outside the State, \$1,351,000 debenture bonds and \$2,844,000 first mortgage bonds on other railroads.

The Code did not give, and the Court did not award, the least semblance of lien to appellee upon any of these outside properties and securities. They were undoubtedly valuable, and contributed largely to the fund in court.

Even without asserting recoupment on that account, the entire net fund is still insufficient to discharge the principal and accrued interest of the \$1,621,000 bonds adjudged to be first entitled to payment.

After deducting from the gross bid \$75,000 paid the Masters for costs and expenses, and \$455,144.50 paid in to discharge the deficit of Receivers' operating debts—making a total credit of \$530,144.50—there would remain to be distributed under the decree on mortgage and other liens only a net surplus of \$1,499,855.50, covering the railroad and all other property. The amount due for principal and interest of the admittedly preferred \$1,621,000 consolidated bonds was at time of decree \$1,800,000.

This, also, leaves out of the reckoning any credit for the \$1,000,000 Receivers' certificates which were by decree constituted a paramount lien upon the railroad prior to all bonds. On the accounting between the preferred bonds adjudged to hold a superior rank and the statutory rail lien, the former were under no obligation to pay off the certificates at their cost, and thereby relieve the appellee as a gratuity.

It is clear upon every test afforded by the undisputed figures that, upon the theory of statutory lien, the fund on which the rail creditor was decreed a postponed lien was inadequate to pay the adjudged first rank bond claim.

Under such circumstances the peremptory order to pay the second charge was an unjustifiable abrogation of the very priority which had been finally decreed as a statutory right to a moiety of the bonds.

THIRD. The decree sought to be reviewed violated the express rulings of this Court and failed to enforce the fixed rule of decision, in that it decreed that the appellee's claim was a "supply debt," entitled to be first paid out of the current income of the receivership.

One of the theories upon which the decree ordered payment was that the claim of the appellee was within the protection of the rule announced in *Fosdick vs. Schall*.

Without exception the claims which have allowed such preference have been for small sums of strictly operating supplies consumed in the use and purchased on ordinary credit and relying upon current income for payment.

Every ruling of this Court has repudiated the theory of unlimited discretion and severely restricted the allowed preference to a class covering a few exceptional and small claims accruing a brief period before the receivership obtained by the foreclosing bondholders.

The Courts speak of the beneficiaries of this bounty of the Chancellor as "a favored class," such as "materialmen and laborers and some few others of "nature."

Morgan vs. Texas Cent. R., 137 U. S., 171.

Mr. Justice HARLAN designated the claims fairly within the scope of such protection as "the current "debts, the daily and monthly expenses" which rely for payment on the daily and monthly earnings.

Thomas vs. P. & R. I. R. R., 36 Fed., 808.

In *Nat. Bk. of Aug. vs. C. K. & W.*, 63 Fed., 25, it was decided that the president of a railroad company "cannot be included among that class of employees "who have no means of ascertaining whether a short "credit to the company is safe or not."

The test applied in *Kneeland vs. Am. L. & T. Co.*, 136 U. S., 89, to a claim of car rental for preference as a current operating expense, is conclusive :

"No one is bound to sell to a railroad company or "to work for it, and whoever has dealings with a "company whose property is mortgaged must be "assumed to have dealt with it on the faith of its "personal responsibility and not in expectation of "subsequently displacing the priority of the mortgage liens."

The appellee was not bound to sell rails on long optional credit if remuneration seemed uncertain. It had adequate opportunity of ascertaining whether it was safe in waiving any claim upon "the current income."

In *Huidekoper vs. Loco. Works*, 99 U. S., 258, it was decided that the vendor of a locomotive "occupied the "position of a general creditor with no special equities "in its favor."

The principle upon which these large transactions on long agreed credits must be refused preference was applied in *Thomas vs. Car Co.*, 149 U. S., 95 :

"The case of a corporation for the manufacture and "sale of cars, dealing with a railroad company, whose "road is subject to a mortgage securing outstanding "bonds, is very different from that of workmen and "employees or of those who furnish from day to day "supplies necessary for the maintenance of the railroad. Such a company must be regarded as contracting upon the responsibility of the railroad com-

“pany and not in reliance upon the interposition of a
“court of equity.”

In affirming the decree the Circuit Court of Appeals not only refused to give effect to this controlling decision, but it *sub silentio* abrogated its own recent ruling in *Bound vs. S. C. Ry.*, 58 Fed., 473, delivered when the Chief-Justice constituted a member of the Court.

There as here a manufacturer sold rails to a railroad, and, after an agreed credit of about eight months and ten months' later extension, claimed a preferential allowance against the *corpus* on the ground that its debt was an “operating expense” and there had been a diversion to pay bond interest, &c.

It was decided that it had waived all claim upon current earnings by the credit given and renewed, which was in law a consent to use the current earnings for bond interest and otherwise.

It declared that this Court had indicated the narrow limits to which an equity court should confine itself in allowing any unsecured claim to displace vested contract liens.

The conclusion reached was :

“The debt of the Lackawana Company was an ordinary merchandise debt, evidenced by notes which were renewed from time to time. It had no stronger equity or claim upon the earnings than had those who had advanced money to pay the interest upon the bonds.

“The claim is quite different from those ordinary and necessary current expenses of operating the railroad contracted but a short time before the receivership, and which, by the sudden action of the Court, are left unpaid.”

The claim originated too long prior to the receivership to be within any accepted test of preferential recognition.

The order in the first receivership case recognized all claims accrued within the preceding six months as proper to be paid.

The appellee was a party. Neither it or any other creditor ever asked the Court to enlarge the terms of the order.

In fact, it never even made any claim of preference until long after the first Receivers had expended all their earnings and been discharged and the foreclosure suit had been instituted.

The principle is "to prevent the indefinite extension of such claims the Courts limit the time within which such demands may be pursued."

The claims recognized by the Court as entitled to protection must be those of the restricted class "accruing for a brief period prior to its intervention."

In the Fourth Circuit the common practice in railway receiverships seems to fix 90 days as the extreme limit within which operating claims must have been incurred to be allowed as preferential.

Fire Co. vs. C. C. & C. R., 62 Fed., 205.

Ibid. vs. Ibid., 52 *Ibid.*, 526.

U. S. Trust Co. vs. N. Y. & W. S., 25 *Ibid.*, 800.

Miltenberger vs. R. R., 106 U. S., 286.

Four months was fixed in

Wood vs. N. Y. & N. E. R., 70 Fed., 741.

In the following cases it was declared that the extreme limit of a "reasonable time" was six months :

Tumer vs. I. B. & W. Ry., 8 Bissell, 315.

Blair vs. St. L. R. R., 22 Fed., 471.

Swayne vs. W., St. & P., 46 *Ibid.*, 38.

Thomas vs. P. & R. I. Ry., 36 *Ibid.*, 808.

Putnam vs. J. L. & St. L. R., 61 *Ibid.*, 440.

Stat. Bk. of Aug. vs. C. K. & W. Ry., 63
Ibid., 25.

Union Trust Co. vs. Souther, 107 U. S., 592.

Ibid. vs. Midland Ry., 117 *Ibid.*, 463.

Mr. Justice HARLAN characterized that limitation "as
" wise and salutary."

" When, therefore, debts of that character remain
" unsettled, or are not put in suit for such a length of
" time as would be deemed unreasonable, it may be
" fairly presumed that the creditors have ceased to look
" for current receipts for payment, and have accepted
" the position of general creditors, who as such need
" have no claims for indemnity upon any special part
" of the income."

Thomas vs. P. & R. I. Ry., 36 Fed., 808.

Mr. Justice BREWER, on the Circuit, said in Blair vs
Ry. Co., 22 Fed. Rep., 474:

" Six months is the longest time I have noticed as
" given.

" If any person permits a claim to continue longer
" than that, he certainly has no right to be considered
" other than as a general creditor with no preference
" over a secured debt."

By agreed credit and extensions the appellee sold
rails relying on the mere personal responsibility of the
railroad company from July, 1891, to October, 1892.

It thereby absolutely released any claim for payment
out of the current earnings of the system during that
period, and left the railroad company a free hand to

dispose of its income at will without any liability to ever account to it therefor.

This rail creditor has forever precluded itself from claiming that a dollar of the earnings prior to October, 1892, should have been used for the payment of its claim. That was not due and it had expressly agreed that it need not be paid out of these current earnings.

It was bound to take notice that during that period three interest payments would mature upon the consolidated mortgage, October, 1891, and April and October, 1892, and current rentals on leaseholds and equipment would have to be met.

In respect to its assertion of an equity against the foreclosing bondholders, it was not a supply creditor with a preference either upon the income or *corpus*, but a mere general creditor who sold rails on the mortgagor's personal responsibility nearly two years before the foreclosure suit was brought.

FOURTH. In charging upon the bondholders security, expenditures of a prior receivership obtained by general creditors when the mortgage was not in default and did not apply, the decree was contrary to equity and denied effect to the express rulings of this Court.

Although the original Receivers only made such payments out of their earnings as they were specifically required to make by orders which remained unchallenged by the appellee and all other creditors until after foreclosure, the opinions hold that "the Receivers diverted the earnings and funds in their hands," to better-

ments, additions and payment of interest and the appellee as a neglected creditor, from whom the earnings were thus diverted, has the right to ask that the Court shall recognize and preserve their debts out of the *corpus* of the bondholders subsequently applying to foreclose.

All the statements of earnings and disbursements made by the Judges are framed upon the theory that the consolidated bondholders must make good out of their estate the wrongful appropriation of earnings made by the Court itself during the original receivership.

As the default on the consolidated bonds did not occur until October, 1892, and they did not apply to foreclose until July, 1893, they had no possible claim to any earnings prior to their suit, and they received no interest.

There is no tolerable legal principle on which lien creditors having a specific contract lien of certain rank can be partially deprived of property right because of a judicial administration of the property affected, at the suit of other creditors and when they were not possibly entitled to any surplus, if realized.

The precise question is set at rest by this Court in *Kneeland vs. Am. L. & T. Co.*, 136 U. S., 89, where this Court reversed a decree charging the bondholders security with the expenses of a general creditors' receivership.

" The receivership was at the instance of a judgment
" creditor, and was with a view of reaching the surplus
" earnings for the satisfaction of his debt. It was not
" at the instance of mortgagees, nor were they seeking
" foreclosure of their mortgages. They were asking
" nothing at the hands of the Court. They were not

"asking it to take charge of the property, or thus impliedly consenting to its management of the property for their benefit.

"Neither lienholder asking the aid of the Court, no obligation was assumed by either in respect to the management of the property as against the other."

The same doctrine that there is no equitable accountability of non-applying mortgagees to restore income paid out under Court orders during a prior receivership has been applied in other cases.

Morgan vs. H. & T. C. Ry., 137 U. S., 171.

Swayne vs. W. St. L. & P. Ry., 46 Fed., 38.

Street vs. Mary. Cent. Ry., 59 *Ibid.*, 25.

"But the intervenor has no equity as against the first mortgage and other liens superior to the second mortgage. These classes of creditors did not of their own volition come into equity, and the rule cannot be applied to them to do equity. They can stand upon their legal vested lien."

Bound vs. S. C. Ry., 47 Fed., 33.

The bondholders had the clear equity to have the decision of this Court enforced for their benefit and to be protected against the spoliation of their fixed security by an alleged equity arising out of the disbursement of earnings upon which they had no claim.

FIFTH. The decision that the consolidated mortgage must restore the moneys paid for interest and rentals upon cars and leased lines, during the first receivership, is contrary to express rulings of this Court.

Neither the foreclosing consolidated bondholders or the prior debenture bondholders received any interest on their liens during either receivership. The only mortgage interest paid during those periods was on the Richmond and Danville firsts, the car trusts and the first mortgages on the leased lines.

The decree makes the foreclosing bondholders chargeable with the interest paid during the receivership to mortgage bondholders other than themselves, and the fund in court is adjudged to make good such payments to others.

This Court disposed of that precise contention in *St. Louis R. R. vs. Cleveland R. R.*, 125 U. S., 668 :

“ It cannot be said that the application of earnings
 “ to payment of interest on the first mortgage bonds is
 “ chargeable to the holders of the second and third
 “ mortgage bonds. The latter alone are interested in
 “ the fund for distribution. That fund, in the sense of
 “ the rule sought to be applied, cannot be said to have
 “ been benefited by the payment to the other bond-
 “ holders from the gross earnings applicable to the
 “ payment of rent. The equity of the petitioners, if in
 “ fact it exists, is against the holders of the first mort-
 “ gage bonds, who have actually received the money
 “ to which it claims to be equitably entitled.”

It was in addition insisted that the interest, rentals and dividends paid on the leased lines during such receivership was a diversion for the benefit of the foreclosing bondholders, and the sale proceeds are chargeable with restoration of such sum.

It has already been shown that the user of the leased lines was not at the instance of the consolidated mortgage bondholders, and their security cannot be charged with any deficit resulting from compliance with the

Court's orders in a suit not brought by them, and when their debt was not in default.

These rental payments for equipping and feeding leased lines were all made under orders of the Court, not applied for by the bondholders.

They submitted to have \$1,000,000 of Receiver's certificates placed in front of their bonds for the purpose of enabling the current income to be thus used to realize earnings upon which they had no possible claim.

The appellee made no attempt to modify them or intercept the expenditures on that account, and must therefore be conclusively presumed to have accepted and approved them as being for the best interests of the whole trust estate including its own.

Cent. Trust Co. vs. Wabash R. R., 34 Fed., 259.

Miltenberger vs. Log. R. R., 30 *Ibid.*, 332.

Calhoun vs. St. L. R. R., 14 *Ibid.*, 9.

Kneeland vs. Am. L. & T. Co., 136 U. S., 89.

Especially is this to be the case when the intervenor, in order to establish a claim for diversion, claims the benefit of the valuable leases and the gross earnings of the entire system.

The income and beneficial traffic of the controlled lines cannot be availed of without accepting the burden of their fair rentals as a necessary operating expense of current management. It is not a diversion to be made good out of the specific security of mortgagees who did not apply for the order and whose own current income was depleted several hundred thousand dollars to pay the arrearages of the Receivers.

SIXTH. The affirmed decree erroneously severed the single lien of a railway mortgage and separated the bond issue into preferred and deferred obligations.

Such a mortgage takes rank as of its record.

This principle of absolute equality of all the bonds issued under the trust deed is of the very essence of such a security and cannot be broken in upon by any judicial construction, subsequent contracts, acts of the parties or legislation.

Pennock vs. Coe, 23 How., 117.

Jackson vs. Ludeling, 21 Wall., 616.

Stanton vs. A. & C. R. R., 2 Woods, 523.

Ames vs. Railroad, *Ibid.*, 206.

State vs. Cobb, 64 Ala., 127.

Barry vs. M., K. & T. R. R., 34 Fed., 829.

Such a basis of credit would be absolutely valueless if it was not held to be what it recites, a common security for the ratable benefit of a class of beneficiaries equally entitled to share therein.

The consolidated mortgage in the first article declares "this mortgage shall be a security for the whole
"or any part of the amount of the bonds authorized
"to be issued as herein aforesaid, and all bonds issued
"hereunder, shall be equally secured hereby without
"regard to the time when the same may be issued"
(Record, 63).

In a recent Pennsylvania case, the non-severable nature of such security was rigidly enforced.

"The bonded debt is a unit, so far as the duties and
"powers of trustees are concerned. He must regard
"the bondholders as a class, and not as individuals.

"It has been held to be a presumption of law that

“all the bonds were issued at the same time which
 “were secured by the same mortgage, and that the
 “fact that they were numbered consecutively gave no
 “priority to any and interfered in no manner with the
 “equality of their holders on distribution. That
 “distribution must be made *pro rata* is well settled.

“What may be realized by such proceeding belongs
 “to the whole class and must be distributed *pro rata*.”

Com. vs. S. & D. R. R., 122 Penn. S., 306.

SEVENTH. The claim of diversion based upon the purchase of steel rails by the Receivers from the appellee gives the latter no equity to charge the mortgage security with a restitution of what was wrongly received by the appellee.

The alleged diversion by reason of interest paid to senior mortgagees and of car trusts and rentals has been already discussed.

Special stress is also laid upon the income diverted to payment of permanent improvements. The Receiver's reports when analyzed show that very much the larger part of this class of expenditures consists of steel-rail purchases.

The Court thus commits itself to the inconsistent theory that steel rails purchased prior to the receivership constitute a current operating expense, while the same rails bought during the Court's possession is not an operating expense at all, but a permanent improvement of such a character as to constitute an inequitable diversion of the earnings.

No precedent sanctions such a view.

It also appears by the record, page 245, that the rails referred to as diversion were purchased directly from appellee.

It is a most remarkable principle of law that the wrongful receipt by it of income that should have been paid otherwise created an equity in its favor to compel the bondholders to pay over a like amount upon a prior unsecured debt held by it.

EIGHTH. The allowance of \$29,828.58 interest by the affirmance decree was in violation of the express ruling of this Court.

This allowance of a large sum for mere interest as such, on a claim against a fund in insolvency refuses obedience to the decision of this Court on the very point in *Thomas vs. Car Co.*, 149 U. S., 116, wherein it was held that no such interest could be recovered.

In the case of *N. Eng. Co. vs. Carnegie Steel Co.*, 75 Fed., 54, cited in both the affirming opinions as authority, such an interest allowance was reversed.

NINTH. There was in fact no diversion of the receivership income, and therefore no restitution can be exacted out of the mortgagee's security.

To establish the charge of income diversion the only figures given in the opinions are that the Clyde Receivers collected \$1,151,791.31, which sum "very

nearly paid all the current operating debts contracted within the six months.

The learned Judges of the Court of Appeals have utterly misconceived the figures.

Dunham, the Receiver's comptroller, gave the only evidence on the subject.

It will be found in the record (pp. 403, 404).

He testified that the Receivers actually paid out in cash on ante-receivership debts for traffic balances, pay-rolls and supply vouchers \$1,237,196.22, *and that such payments were in addition to the proceeds of sale of the \$1,000,000 Receiver's certificates used for the same purpose.*

So that the opinions evolve the theory of diversion by an unintentional underestimate of the six months' supply and preferential claims of \$1,000,000.

It is also stated as an important consideration in determining the equitable obligation of the mortgage security to restore that the Clyde Receivers turned over to the mortgagees' Receiver the sum of \$141,325.19 and much material.

This method of stating the situation very unfairly ignores the other side of the account, which fully appears in the record.

The new Receivers took the cash and assets of the original appointees and assumed all their obligations.

Dunham's evidence shows the mortgagee's Receivers realized not only the cash stated in the opinions, but also collected other large sums from the earnings of the Clyde Receivers, so that the total realized by them from that source was \$535,167.95 (Record, 426).

Those collections and the income of the mortgagee's receivership were used by the foreclosure Receivers to

pay the following expenses and debts of the first Receivers (Record, 427) :

Traffic balances	\$53,257 20
Damage claims	4,163 45
Pay rolls	467,562 79
Material	515,877 87
<hr/>	
Making a total of	\$1,040,861 31

The bondholders' administration, instead of receiving any net cash from the first Receivers, as the opinions assumed, actually experienced the burden of a deficit on that account of \$505,693.36 over and above all receipts from that source.

The expenditures for construction and new equipment during the receivership were inconsequential.

The situation can be fairly stated as follows : The foreclosing bondholders were paid nothing during either receivership.

The first Receivers paid out of their current income upon the company's labor and supply debts \$97,190.64 more than they received from ante-receivership earnings.

The mortgagee Receivers paid out of their current income \$505,693.36 on account of the debts of the first receivership over and above all receipts from the latter's earnings.

The bondholder purchasers, in order to protect their security, paid into court \$455,144.50 to liquidate the deficit of the last Receivers' operating debts after application of all their earnings, this deficit resulting from the payment of the Clyde receivership debts.

In addition, they paid \$1,000,000 Receivers' certificates and interest issued as paramount lien, the proceeds of

which were used exclusively for payment of preferential labor and supply debts accruing in the six months prior to June, 1892. Upon such a showing, the bond creditors' security cannot be further oppressed by any additional assessment to pay a general creditor's debt. Restoration can only be ordered to equalize the sum diverted. Anything in addition is an illegal exaction.

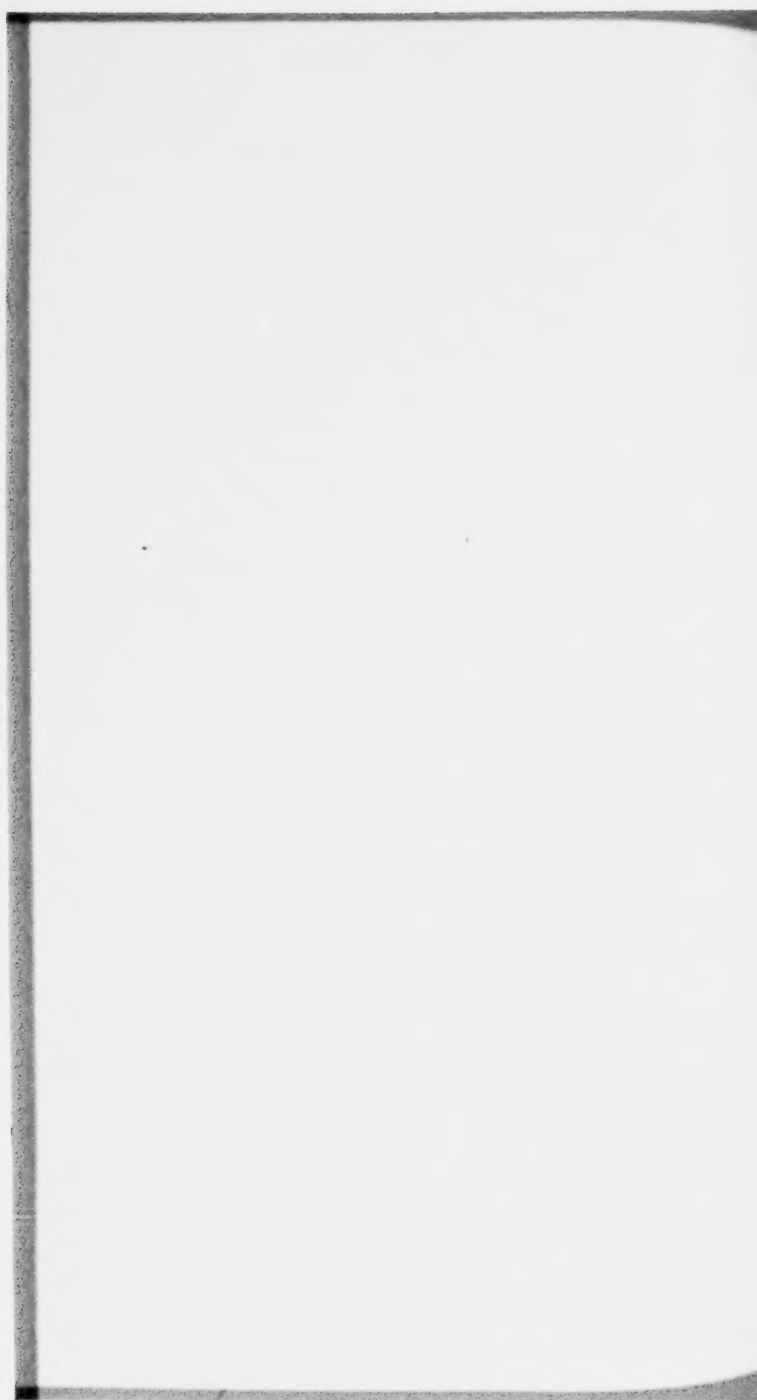
The accounts afford no basis for asserting any right of preference for this rail debt over the vested lien of the mortgagees as already reduced by \$1,500,000 on account of supply claims, traffic balances and pay-rolls.

Neither they nor their security have ever inequitably received any income to which they were not entitled and the appellee was.

The decree should be brought here for review.

HENRY CRAWFORD,
WILLIS B. SMITH,
Solicitors.

December 12, 1896.



No. 39.

Brief of Phelps for Appellant.

U. S. Supreme Court, U. S.

FILED

OCT 5 1898

JAMES H. MCKENNEY,

Filed Oct. 5, 1898.

Supreme Court of the United States,

OCTOBER TERM, 1898.

No. 39.

THE SOUTHERN RAILWAY COMPANY,

Appellant,

vs.

THE CARNEGIE STEEL COMPANY.

ADDITIONAL BRIEF FOR APPELLANT.

MR. PHELPS' POINTS.

HENRY CRAWFORD,

E. J. PHELPS,

For Appellant.

Supreme Court of the United States,

OCTOBER TERM, 1898.

No. 39.

THE SOUTHERN RAILWAY COMPANY,
Appellant,

v.

THE CARNEGIE STEEL COMPANY.

APPELLANT'S ADDITIONAL BRIEF.

Statement.

The facts in this case are set forth in detail in the principal brief in behalf of the appellant. Their substantial results are these: In June, 1893, the Central Trust Company of New York, as trustee, brought suit in the United States Circuit Court of Virginia to foreclose the consolidated mortgage of the Richmond and Danville Railroad Company, dated October 22, 1886, and under which default had occurred on the 1st of October, 1892. And on motion of the complainant, receivers of the mortgaged property were appointed on the 17th of July, 1893 (*Rec.*, p. 233; p. 240).

On the 13th April, 1894, a decree of foreclosure and sale was made in that suit, and on the 15th of June, 1894, the mortgaged property was sold under it to parties representing the mortgagees, for the net sum (after deducting costs and expenses of sale) of \$1,955,000, the amount found due under the mortgage by the decree being \$5,002,155.81 (*Rec.*, pp. 262-275-291). The purchasers were subsequently incorporated as the Southern Railroad Company, which is the appellant here.

In June, 1892, and before the default under the mortgage, a suit had been commenced in the same court by W. P. Clyde and others, general creditors of the railroad company, praying for general relief as such and for the appointment of receivers. And in that suit receivers were appointed on the 15th June, 1892, and authorized to issue receivers' certificates for \$1,000,000, which were issued accordingly (*Rec.*, pp. 19-134).

That receivership was terminated and the receivers discharged before the appointment of the receivers in the foreclosure suit. And two of the former receivers were appointed (with a third associate) in the latter cause (*Rec.*, p. 223).

The complainants in the foreclosure suit were not parties to the suit of Clyde & Co. (though they subsequently became parties), and had no concern in it and no interest in the relief sought. They received nothing from either receivership toward the interest or principal of the mortgage, but were compelled to pay the receiver's certificates issued by the Clyde Receivers, and also a large sum for debts and liabilities incurred by those receivers (*Rec.*, pp. 280, 403-29).

The appellee's claim here in controversy is for 4,203 tons of railroad iron delivered to the Richmond and Danville Railroad Company between July and October, 1891, while the road was in its hands, more than a year before the default under the mortgage, nearly two years before the appointment of the receivers in the foreclosure suit, and nearly one

year before the receivership in the Clyde suit (*Rec.*, p. 374). The iron was sold under a written contract with the company, on ten months' credit (*Rec.*, p. 370). The notes given for it were several times renewed; the last ones, now outstanding, bearing dates from March 21 to June 27, 1892.

A claim founded upon them was filed during the Clyde receivership in October, 1892. In February, 1874, it was filed under the foreclosure receivership, as entitled to a preference, because bonded interest had been paid out of earnings by the company prior to either receivership. In March, 1874, by an amendment to the claim, a right to preference over the mortgage was asserted under the lien law of the State of Virginia (*Rec.*, 355-366-7-379-80).

The Special Masters, to whom the case was referred, and the Circuit Court in the Fourth Circuit, sustained the claim as against the mortgagees on the latter ground, and rendered judgment accordingly for \$125,067.39, principal, and \$29,828.58, interest, which judgment was affirmed by the Court of Appeals, with additional interest, though on very different grounds. And the case comes here on a writ of *certiorari* granted by the Supreme Court of the United States (*Rec.*, 385-471-565).

The question presented is whether the mortgagees must pay the appellee's claim out of the remnant of the *corpus* of the mortgaged property, there being no surplus of earnings or income whatever under either receivership.

POINTS.

The various decisions of this Court bearing upon the case are recent and familiar. They are cited and discussed in the principal brief on the part of the appellant. It is not proposed again to review them, but only to consider the main question here involved, in the light of the general rules they have

laid down, and the general principles of law applicable to the subject.

I.—The priority of a valid and duly recorded mortgage over subsequent unsecured debts of the mortgagor, is no more open to question in the case of a railroad mortgage than in any other.

The law of the land permits and recognizes such mortgages, and prescribes the method of their execution and record and the means of their enforcement. It thus invites and sanctions advances by the mortgagee, upon the security of the mortgage, which would not be made without it. The money so advanced creates the railroad. A mortgage to secure it is therefore of the nature of a purchase money mortgage.

To give to subsequently incurred debts of the mortgagor a priority over the mortgage, would destroy the principal feature and only value of its obligation. Such a proceeding would be as much in contravention of fundamental principles of law, as of common justice and morality. No State can constitutionally pass a statute having that effect. Nor is it within the judicial power of any Court so to violate a contract.

The language of this Court upon the subject may usefully be referred to. It was found necessary in view of the preposterous claims that had not only been asserted, but in some tribunals, under the demoralization of receivership administration, had been sustained.

Says Mr. Justice BREWER in *Kneeland v. Am. Loan & Trust Co.*, 136 U. S., 89: "The appointment of a receiver vests in the Court no absolute control over the property, and no general authority to divest contract liens. Because in a few special and limited cases this Court has declared that unsecured claims were entitled to priority over mortgage debts, an idea seems to have obtained that a court appointing a receiver acquired power to give

such preference to any general and unsecured claims. It has been assumed that a court appointing a receiver could rightfully burden the mortgaged property for the payment of any unsecured indebtedness. Indeed, we are advised that some courts have made the appointment of a receiver conditional upon the payment of all unsecured indebtedness, in preference to the mortgage liens sought to be enforced. Can anything be conceived which more thoroughly destroys the sacredness of contract obligations? One holding a mortgage debt upon a railroad has the same right to demand and expect of the court respect for his vested and contracted priority, as the holder of a mortgage upon a farm or lot. So when a court appoints a receiver of railroad property, it has no right to make that receivership conditional upon the payment of other than those few unsecured claims which by the rulings of this Court have been declared to have an equitable priority. No one is bound to sell to a railroad company or to work for it, and whoever has dealing with a company whose property is mortgaged must be assumed to have dealt with it on the faith of its personal responsibility, and not in expectation of subsequently displacing mortgage liens. It is the exception and not the rule that such priority of lien can be displaced.

We emphasize this fact of the sacredness of contract liens, for the reason that there seems to be growing an idea that the Chancellor in the exercise of his equitable powers has unlimited discretion in this matter of the displacement of vested liens."

This language, from which no member of the Court dissented, has been referred to by the Court and reaffirmed in several subsequent decisions, including the very recent cases of *Thomas v. Coal Co.*, 149 U. S., 95, by Mr. Justice SHIRAS, and *Coal Co. v. Central Railroad Co.*, 170 U. S., 355, by Mr. Justice WHITE.

II.—It is not to be questioned therefore, that in order to displace the lien of a valid railroad mortgage in favor of subsequent unsecured debts of the mortgagor, the consent of the mortgagee, either express or implied, must be shown.

There is no case, there can be no case under the principles of the common law, in which property rights derived under lawful contract can be determined upon any other basis than the true construction and meaning of the contract itself.

And it will be found that in every decision in which any apparent displacement of such a lien has been approved by this Court, it has been founded on what was held to be such a consent.

It constitutes no exception to this rule that the *earnings* of the mortgaged property, before possession taken by the mortgagee, have been treated as belonging to the mortgagor and subject to his liabilities.

Nor that the *earnings after possession*, taken through a receiver, have been treated as applicable in the discretion of the court to the necessary expenses of the receivership, and the preservation of the property.

III.--Various untenable theories have been set up upon which the consent of the mortgagee to the displacement of his contract lien was sought to be derived.

1. It has been claimed that a mortgagee who applies for a receivership consents to all conditions, however arbitrary and unjustifiable, which the Court in granting it, or at any time afterwards, may think proper to impose, and may therefore be required to postpone his mortgage to all subsequent debts of the mortgagor. Which amounts to this, that by seeking to enforce through legal proceedings the lien of his mortgage, he is to be taken as consenting to its illegal destruction.

This proposition is sufficiently refuted by the decision of this Court above quoted.

The discretion to which an application for a receivership is addressed, is a judicial and not an arbitrary discretion, and must be exercised in accordance with the settled rules of law.

If the complainant is not justly entitled to the remedy he seeks, he cannot obtain it upon any conditions. While if he is entitled to it, he cannot be required to pay third persons for it, by the relinquishment in their favour of any part of his contract rights.

It has been said that a complainant coming into a court of equity for relief, must do equity. This is a maxim of universal application. But like most attempts to embody principles in what are called maxims, misleads more frequently than it enlightens. The equity thus intended is not an arbitrary or general moral equity, to be measured by the length of the Chancellor's foot, nor any equity at all in favour of those not parties to the cause, or to the contract on which the cause depends. It is the equity which parties to the cause and the contract have a legal right to demand from the one who is enforcing his legal rights against them. It does not create new liabilities against the complainant, nor require him to pay the debts or redress the hardships of strangers for which he is not responsible, as a condition of obtaining the justice to which he is entitled against those with whom he has contracted. It only enforces his pre existing liabilities, arising out of his contract or its just implication, in favor of those against whom he is proceeding.

2. It has likewise been claimed that if a mortgagee upon foreclosure is shown to have received from the mortgagor any interest upon the mortgage debt as it fell due, while the mortgagor remained in possession of the property, the money so paid will be treated as having been improperly withdrawn from a fund that should have been reserved to meet the

subsequently accruing unsecured debts of the mortgagor, in case of his insolvency; and that an implied promise to refund it by paying those debts out of the mortgaged property will be thereby raised against the mortgagee.

This proposition arises out of the theory that has made progress in some quarters, but which as before seen has been repudiated by this Court, that the legal effect of a railroad mortgage is, instead of giving the mortgagee the priority of lien for which it expressly provides, to postpone him to all other subsequent creditors of the mortgagor, who must first be paid out of the mortgaged property before the mortgagee can receive anything. So that instead of obtaining by his mortgage a prior lien upon the property it covers, he becomes by its operation the only creditor of the mortgagor who has no security at all.

It is plain that while the road remains in the hands of the company, the mortgagee who receives payment of his interest when it accrues, receives only what he is legally entitled to, and cannot afterwards be deprived of, and incurs no obligation to other unpaid creditors.

There is no more reason why he should refund the just payment he has received, in order to pay subsequent creditors, than there is why they, if paid, should refund their money in order to pay him.

Mortgage interest, as much as the operating expenses of a railroad, is necessary to be paid in order to retain possession of the property itself. And it might as well be claimed that one general creditor for supplies should refund his payment in order to pay another, as that the mortgage creditor should refund his interest to pay for supplies. His claim as mortgagee is at least as good as that of any subsequent unsecured creditor.

It will be observed that no interest was paid on the mortgage in question in this case, after April 1, 1892, which was prior to the first receivership, and

fifteen months before the commencement of the foreclosure suit and the appointment of the receivers therein.

IV.—In two classes of cases only has this Court held that there is an implied contract on the part of a railroad mortgagee to pay any part of the subsequent unsecured debts of the mortgagor, or to furnish any money to be used for that purpose.

These exceptions stand upon entirely different grounds, and will be considered separately.

1. It has been held that as a railroad is "a going concern," and as an abrupt stoppage of its operation upon default under a mortgage upon it would be a great detriment to the property, it may be implied that it was the intention of the mortgagee and therefore the fair construction of his contract, that in such an event the receiver appointed on his motion to take possession of the road and to run it under the order of the court, should, as an almost necessary condition, pay out of the earnings those debts due for indispensable operating expenses, such as labour and current supplies, as had accrued within a very short time before the receivership.

That time has never by this Court been extended beyond a few preceding months. And in almost every case where such a payment has been approved, the Court has taken occasion to remark that its allowance constituted the exception and not the rule, and must be granted with great caution.

It will be seen from the record that the claim of the appellee in the present case cannot be brought within the rule thus established, either in the character of the debt, the time and circumstances within which it was contracted, or the party in whose behalf it exists.

(a.) The demand is not for labour, nor for ordinary current supplies necessary to the operation of the

road. It is a merchandise debt, upon long credit, for a large quantity of iron used *for reconstruction purposes*, and mostly, as the record shows, upon various roads in several other States than the one in which the mortgagor is incorporated, some of which roads are not covered by the mortgage.

A perusal of the language of this Court in the series of cases involving the question of the character of the debts that have thus been allowed a preference, will show that in no case has any warrant been given for affording it to such claims as this. Such have always been treated as "debts due general creditors, entitled to no special equities."

A debt for the purchase of a locomotive was expressly so held (99 *U. S.*, 258).

The rental of cars was in repeated cases held to be entitled to no preference (136 *U. S.*, 89; 149 *U. S.*, 95).

Materials for construction purposes were excluded (99 *U. S.*, 389).

And in a case in the Circuit Court of Appeals, Chief Justice FULLER presiding, the very claim here in question for steel rails was disallowed (58 *Fed.*, 473).

The claims entitled to preference have been described as "the current debts, the daily and monthly expenses" (per Justice HARLAN, 36 *Fed.*, 808), as "a favored class"; "materialmen and labour men and some few others of that nature" (137 *U. S.*, 171), as "the exception and not the rule" (125 *U. S.*, 658), as "a few special and limited cases" (136 *U. S.*,); "the discretion should be exercised with very great care" (106 *U. S.*, 286).

(b.) Nor was this debt incurred within any period of time that has ever been sanctioned by this Court as entitling claims to preference.

That time has, in many cases, been limited to ninety days. In others, four months has been the

limit. In no case has the period been extended beyond six months.

It has repeatedly been held that "if a person permits a claim to continue longer than that, he has no right to be considered other than a general creditor." And that it "may fairly be presumed that he has ceased to look to current receipts for payment."

The theory on which the implied contract by the mortgagee to pay said claims is derived is, that they are for the immediate necessities of operating expenses, in order to prevent a stoppage—supplied by those who look to the immediate receipts for payment; and therefore of no greater amount than the earnings of the road in the receiver's hands would ordinarily be sufficient to pay.

It will be seen from the record that the iron in question was delivered between July and October, 1891, under a written contract for ten months' credit, and notes taken for it, which were several times renewed under the stipulations of the contract, the present notes bearing date between March 21st and June 7, 1892. The first receivership granted in the suit of the general creditors was June 11, 1892, nearly a year after the delivery of the iron. And the mortgagee's receivership was granted July 17, 1893, nearly two years after that delivery, and from one year to sixteen months after the maturity of the last renewal notes now in question.

(c.) Regard has also been had in determining the right of preference of such claims, to the parties to whom they are due and the circumstances under which they arose. And the preference has been accorded to those only, who furnishing indispensable supplies relying upon immediate current earnings for payment, are not in a situation to be presumed to know that those earnings may be suddenly diverted by a receivership, or brought to an end by the stoppage of the road.

This is but the application of the general rule that

where the question is whether an implied contract exists, all the circumstances of the case must be taken into consideration.

This Court refers to such claimants as "a favoured class"—as "materialmen, labourers and some few others of that nature" (137 *U. S.*, 171).

No creditor could be farther outside such a class and its equities, than a great corporation delivering hundreds of thousands of dollars worth of iron for reconstruction, two years before the receivership, on a credit of ten months.

It is easy enough to say that any legitimate debt contracted in the course of the operation of a railroad or the prosecution of its business, or the reconstruction of its worn out or destroyed property, is necessary to its maintenance as "a going concern"; and that the time when and the party in whose favour it is contracted are immaterial, so long as without fault of the creditor it has never been paid. In one sense that is true. But that is not the question that arises when it is proposed to give the subsequent debts of the railroad company priority over an antecedent mortgage.

As the mortgage is valid and duly recorded, and is express and explicit in respect to the paramount lien it creates, and as the money which called the road into existence has been advanced on the faith of that lien, it is necessary in order to supercede it (as has been already remarked) to reach that result in accordance with and not in violation of the contract. In other words, to find in its terms either the express or the implied agreement of the mortgagee to that effect. In the very limited class of very recent claims indispensable to the daily operation of the road, and to prevent a stoppage of traffic upon it, such an agreement has been held to be implied in favour of those relying upon it.

The extent of that implication, therefore, must be the criterion in determining what claims can be

given a preference over the mortgage. It is obvious that if the claim here involved has it, there is absolutely no debt honestly contracted by a company in the administration of the railroad and its business, that is not entitled to the same preference, and for an equally good reason.

For it will be found impossible to state any line of distinction between this and any other debt of the company so contracted.

The real question on this branch of the case is, then, whether the Court in construing the mortgage can hold it to be the legal effect of its terms, that instead of the prior lien it provides for to secure the money borrowed on the faith of it, the mortgagee shall have no lien at all. That he shall be the last instead of the first creditor to be paid.

Will it be seriously contended that such is the fair legal construction of this mortgage, or the real intention of the parties? Or that any decision of this Court has given countenance to such a construction?

Or can any legal ground be stated other than the express or implied agreement of the parties to the contract, upon which this claim can be given priority over the mortgage?

Were the law on this subject other than what it is, the mortgagor would be exonerated from the obligations of his mortgage to the same extent that the mortgagee would be deprived of its protection. As soon as the money loaned on its security was obtained, the borrower could proceed to contract subsequent debts to the full value of the property, which would have priority over and defeat the mortgage.

And in the present case, if claims of the character of that presented were large enough to exhaust the small remnant now left for the mortgagee, he might be left on the foreclosure of his mortgage, without any satisfaction at all.

2. It has also been held by this Court, that where earnings of a road have been diverted by a receiver from the payment of debts incurred for its operating expenses, and have been expended upon the permanent improvement of the road, a creditor for such a debt incurred on the mutual understanding that it would be paid out of the current earnings, is entitled to be paid to that extent out of the subsequent earnings in the hands of the receiver, in priority to the mortgage (*Coal Co. v. Cen. R. Co.* 170 U. S., 355).

That there has been such a diversion, and that the debt for which the preference is claimed is one that should have been and was agreed and expected to have been paid out of the current earnings so diverted, and that there is income in the hands of the receiver to pay it, are facts which must be established by the claimant, on whom is the burden of proof.

The claim in the present case is not brought by the evidence upon either of these points, within the rule laid down by the Court.

(a.) There has been no such diversion of earnings.

It is to be observed in the first place that the mortgagees are not responsible for the proceedings under the first receivership.

That was granted upon the application of general creditors, in a suit to which the mortgagees were not then a party, and before any default had occurred under the mortgage. With the bringing of the suit, or the appointment of the receivers, the mortgagees had nothing whatever to do, nor were they interested in its result, or entitled under any circumstances to the earnings in the receivers' hands.

It is true that they subsequently became parties to the cause, but they could not have been heard in opposition to orders of the court respecting disbursements of the receivers, because they had no interest in the income, or the business, and as mort-

gagees before default had no real standing in court in a suit that did not attack or question their mortgage rights.

It has been erroneously assumed by the court below, that the two receiverships were in some way not defined, connected together, with a view to a reorganization of the company. There is not a word in the record to support such an assumption, and it is an entire mistake in point of fact. A comparison of the bills filed in the two cases will show that the relief sought is altogether different, and that the bill of the general creditors could in no respect benefit the mortgagees (*Record*, 1 to 19; 223 to 239).

The consequences to the mortgagees resulting from it were only to impose upon them a heavy charge for the debts and expenditures of the receivers appointed under it. Nor was there any attempt or scheme for reorganization till after the first receivership had closed.

It is true that the two receivers under the first receivership were, after the close of that and their discharge, reappointed, with one other person, receivers in the foreclosure suit. This was only because they were familiar with the business of the system, and had shown themselves capable of managing it.

The suits were subsequently consolidated. But that was upon the motion of *the appellee in this case*, upon grounds and for purposes connected only with the claim here in question, and which did not justify the consolidation, and against the protest of the appellant (*Rec.*, pp. 359-362-364).

This Court has repeatedly held that mortgagees are not chargeable with the consequences or liabilities of a previous receivership at the suit of general creditors, and cannot be held to restore income diverted by such receivers under orders of court or otherwise.

Kneeland v. Am. L. & I. Co., 136 U. S., 89; *Morgan v. Railway Co.*, 137 U. S., 171. And see also to the same effect *Swayne v. R. Co.*, 46 Fed., 38;

Bound v. S. C. R. Co., 47 Fed., 33; *Street v. R. Co.*, 59 Fed., 25.

It will be seen from the record, that the foreclosure receivers received nothing whatever from the former receivership, either in the payment of interest or otherwise, but on the contrary were compelled to pay out of the *corpus* of the mortgaged property a very large amount.

They received from the former receivers, balance in their hands	\$141,325 19
And collected from the earnings of the former receivership	393,842 76
	<hr/>
	\$535,167 95
But they were compelled to pay on the debts and liabilities of the former receivership	\$1,237,196 22
And also the certificates of the former receivers authorized by the court before the mortgagees became parties	1,000,000 00
	<hr/>
	\$2,237,196 22
Making a balance paid by the foreclosure receivers for the liabilities of the former receivership, of.	\$1,702,028 27
<i>Rec</i> , p. 280, pp. 403-04.	

It is quite clear, therefore, not only that the mortgagees themselves under their receivership diverted no earnings of the road from its operating expenses, but that they repaid out of the *corpus* of the remnant of the mortgaged property this large sum, that had been used for all purposes by the former receivers over and above their receipts, under orders of the court.

There is no evidence in the case to show that any such amount as was so repaid had been expended by the former receivers for permanent improvements. And the contrary is rendered probable by such proof as there is. So that if any such improvements were

in fact made by the former receivers, they were not made out of, but in excess of earnings, and were more than repaid by the mortgagees.

Hence, even if the mortgagees are made chargeable with the proceedings and liabilities of the former receivers (as we respectfully submit they cannot be), there is no money in their hands that in any view of the case would be applicable to the appellee's claim.

The decision of the Court of Appeals was based upon an entire misapprehension of the figures above given. That court did not hold that the appellee's claim should be paid by the mortgagees out of the *corpus* of the property, as must necessarily be the case if it is paid at all. But they held that *the earnings* which they erroneously conceived to be in the hands of the receivers were applicable to the payment of it, on account of the previous diversion of earnings by the Clyde receivers, and by the railroad company while in the possession of the road. And they overlooked altogether the million of dollars of the Clyde receivers certificates which the mortgagees were compelled to assume.

(b.) Nor is the claim of the appellee shown to have been contracted in just reliance upon the current earnings of the company, so as to be brought on that point within the decision in *Coal Co. v Central R. Co.*, *supra*.

In one sense, it is true, all incurred debts of a railroad company may be said to be contracted in expectation of payment out of its earnings, because it has no other ultimate resources. If that expectation were sufficient, no such distinction as that pointed out by the Court in the case referred to would exist, and all debts would stand on the same footing. But that decision admits the right of preference on account of a diversion of current earnings, only in such supply claims as ought to be paid, and are actually expected to be paid out of current

earnings, and which would have been so paid but for the diversion.

The amount, the nature and circumstances of the appellee's claim, and the long credit contracted for, show that such was not the expectation on either side. The debt was not for operating expenses, but for reconstruction, and could not have been paid or reasonably expected to be paid out of current expenses.

It has already been pointed out, that this demand was not presented under the order of the court in the first receivership, which directed the payment of supply debts that had accrued within six months, as being entitled to share in such payment. That when filed later, no right of preference was asserted for it (*Rec.*, p. 355); that not until February 24, 1894, under the foreclosure receivership, was that right set up, and then only upon *the earnings* in the hands of the receiver, and upon the ground that earnings had been diverted by *the company*, while running the road prior to any receivership, to *the payment of mortgage interest* (*Rec. pp.* 366-7); and that afterwards, by amendment (March 12, 1894), the right to a statutory preference was set up under the law of Virginia (*Rec.* 379-80). It was upon this last ground, overruling the others, that the decision of the Special Master and the Circuit Court proceeded, in allowing a priority to the claim (*Rec.*, p. 385, p. 471).

It cannot be maintained under these circumstances that the claim was agreed or expected by the parties to be paid out of current earnings which have been diverted to permanent improvement. It is itself a claim for permanent improvements. If current earnings had been used to pay it, a creditor for supplies for operating expenses might have demanded a preference on the score of such a diversion.

If any debt of the management can be regarded as contracted on the general and long credit of the company, surely it was this.

(c.) Nor is there any surplus of earnings in the hands of the receivers, or of the mortgagees. The balance on income account, as already pointed out, was largely the other way.

If the appellee's claim is to be paid, therefore, it must come out of the pocket of the mortgagees, and would represent nothing that they have received.

V.--The appellee's claim is not entitled to a preference under the statute of Virginia.

1. A large part of the mortgage debt was contracted prior to the passage of that statute. And it will not be claimed that the subsequent passage of the act could confer a lien that would be prior to the mortgage, so far as that branch of the debt is concerned.

2. As the mortgage itself was executed and recorded before the act, and provided for the issue of the entire amount of bonds now outstanding, upon an indivisible security that under settled rules stands for the whole debt equally and alike, the statute lien subsequently authorized could not take precedence of *any part* of the mortgage debt.

Especially as all the bonds under the mortgage were issued and outstanding before the appellee's claim accrued (*Rec.*, pp. 387-389).

It is the general rule that a mortgage given to secure future advances takes precedence of a subsequent mortgage, in respect to all such advances as are made before the subsequent mortgage is recorded. And the same principle applies to a lien created or provided for by statute.

3. Nearly all the rails furnished by the appellee were used upon roads outside of the State of Virginia (*Rec.*, p. 382). The lien under the statute at-

taches only to the property upon which the labour or materials are expended, if within the State. The act can confer no lien upon property without the State, nor upon any within it, for work done upon other property beyond its jurisdiction.

There can be no such thing as a lien upon a railroad in Virginia, under a statute of Virginia, for supplies furnished on a railroad in Georgia, whether both roads belong to the same party or not.

4. Other satisfactory reasons against the lien claimed under the Virginia law will be found, if desired, in the principal brief for the appellant. No effect was given to this statute as having any application to the case by the Court of Appeals below.

VI.—Interest upon the claim of the appellee to the amount of \$29,828.58 was improperly allowed, by a divided court (*Rec.*, pp. 471-498). The decisions of this Court are against it.

Thomas v. Car Co., 149 U. S., 116;
N. Eng. Co. v. Steel Co., 75 Fed., 54.

E. J. PHELPS,
Of Counsel.



No. 39. S.

Ex. of Crawford

62d: Supreme Court, U. S.

FILED

OCT 7 1898

JAMES H. MCKENNEY

Filed Oct. 7, 1898.
Supreme Court of the United States.

39-

SOUTHERN RAILWAY COMPANY,

Appellant,

vs.

CARNEGIE STEEL COMPANY, LIMITED,

Appellee.

Certiorari TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
FOURTH CIRCUIT.

BRIEF FOR THE APPELLANT.

HENRY CRAWFORD,

WILLIS B. SMITH,

Solicitors.

E. J. PHELPS,

Of Counsel.

Supreme Court of the United States.

No. 278.

SOUTHERN RAILWAY COMPANY,

APPELLANT,

VS.

CARNEGIE STEEL COMPANY, LIMITED,

APPELLEE.

Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

Statement and Brief for Appellant.

The *certiorari* allowed by this Court brings up for review the decision of the Circuit Court of Appeals for the Fourth Circuit, awarding to the Steel Company's intervention for rails sold to the Richmond and Danville Railroad Company, a priority over its mortgage bonds, and ordering the principal and interest of such ante-receivership claim for rails to be paid as a preferential debt out of the proceeds of sale of the mortgaged property. (76 Fed. R., 492.)

The Richmond and Danville Railroad Company was a Virginia corporation, owning a line of railroad exclusively in that State which extended from Richmond to Danville, 152 miles.

Through leases, stock ownership and working contracts it controlled and operated 3,168 miles of addi-

tional railroad belonging to 26 other corporations, constituting an important system between Washington and the Mississippi River.

The railroad company had executed three mortgages on its road; in 1874 a first mortgage for \$6,000,000; in 1882 a debenture mortgage for \$4,000,000; in 1886 a consolidated mortgage for \$4,527,000; also in 1889 a mortgage covering certain equipment and other property for \$1,390,000, and in 1891 an equipment trust mortgage for \$883,000.

On June 16, 1892, Clyde and others, as stockholders and creditors, filed a bill in the Circuit Court for the Eastern District of Virginia against the railroad company, alleging its insolvency and praying for a sequestration of all its property.

The mortgagees were not made defendants to the bill nor was there any default in interest upon any of the bonded debt when such suit was instituted.

The Court on the same day appointed temporary Receivers of all the railroads and assets of the corporation, including all its leased, controlled and operated lines with instructions to take possession and continue the operation of the system.

Out of the earnings coming into their hands, the Receivers were authorized to pay their own current expenses of operating the roads, traffic balances and also "to pay and discharge all the current and unpaid pay-rolls, vouchers and supply accounts incurred in the operation of said railroad system at any time within six months prior hereto" (Record, 22).

On June 28, 1892, the complainants filed a petition in the cause showing that the ante-receivership supply bills

coming within the scope of the order would amount to about \$1,000,000, and were being pressed for payment, that the first mortgage interest and rentals on leased lines accruing on July 1, 1892, would require about \$938,687 and the net earnings of the system would not be sufficient to discharge such preferential debts and also pay the mortgage interest and rentals.

They therefore prayed that the preferential debt should be capitalized by an issue of Receiver's certificates so that the current income might be used to pay bond interest and rental of leases (Record, 26).

The Court made an order on this showing, authorizing the issue and sale of \$1,000,000 Receivers' certificates, which were decreed to be a first lien upon the railroad, leaseholds and income, the proceeds of which were to constitute a special fund to be used exclusively to pay off the preferential operating debts of the system incurred within six months prior to the receivership. Such claims were to be paid only upon the audit and approval of Special Masters who were appointed by such order.

The Receivers were also instructed, until further direction, to pay all maturing car-trust installments and the rentals of leased roads. The Court, reserved full power to set aside or modify such order on the application of any party in interest (Record, 134, 137).

On August 12, 1892, the Receivers filed a report showing that, under their order of appointment, they had taken possession of and were operating 3,320 miles of railroad and 200 miles of steamer lines, and stated in detail the mortgage, leases and rental obligations of the system.

They also reported that on their taking possession on

June 16, 1892, they had received from the railroad company the sum of \$480,427.91 cash; the ante-receivership labor rolls then unpaid amounted to \$619,596.59; the outstanding liability for taxes, six months' supplies, traffic balances, &c., was \$1,244,510.93; the floating debt was \$4,434,450, secured by pledge of bonds and stocks aggregating a par value of \$9,924,100; there were car trusts, \$895,100, and an emergency loan of \$567,000.

Of the Receivers' certificates authorized by the order of June 28, 1892, they had sold \$684,964.38.

They also submitted a statement of the various payments they had made for rentals of leased railroads and equipment, amounting to a total of \$860,814. (Record, 154.

On August 16, 1892, the provisional Receivers were made permanent, and vested "with all and singular the rights, powers, titles, duties and obligations set forth in and by their original order of appointment, and the orders supplemental thereto heretofore entered in this cause."

No motion was ever made by the appellee or other supply creditor to enlarge the six months' limitation beyond which ante-receivership debts were not to be paid. No objection was ever filed against the continued operation of the leased lines or the payment of rental therefor during the Receivers' *actual* occupancy or any modification sought of the orders directing their continuance.

Special masters were appointed on August 16, 1892, to take the necessary accounts and report "the amount and nature of all the indebtedness of the said Richmond and Danville Railroad Company and whether secured by mortgage, pledge or other lien upon any

"portion of the corporate property," etc., and all creditors (except the holders of bonds secured by recorded mortgage) were required to file their respective claims with the special masters on or before December 1, 1892, "to the end that the validity, amount and respective priorities upon the property or income thereof may be determined and reported on by the special masters to the court." (Rec., 173.)

The Carnegie Steel Company, Limited, on October 14, 1892, appeared in the cause, and filed with the special masters its verified claim of debt for \$125,067.39 and interest, upon five promissory notes of the railroad company, dated in March, April, May and June, 1892, executed and payable in New York.

It was alleged generally in such proof of debt that the notes were given for steel rails, but the contract under which such material was furnished was not exhibited or stated. No claim was made either of a statutory or equitable lien against income, nor was any showing made that the debt was within the six months class, or constituted anything but an unsecured liability. (Record, 355.)

On October 27, 1892, an amended claim was filed, showing that the rails were delivered in July, August and October, 1891, under contracts of June and October, 1891. No claim of lien or preference was asserted in this amendment. (Record, 358.)

On October 1, 1892, the first default occurred in the payment of interest upon the consolidated bonds of the railroad company secured by its third mortgage executed in 1886.

On July 17, 1893, the Central Trust Company filed its

original bill to foreclose, subject to prior liens, the consolidated mortgage executed by the Railroad Company to it, as trustee, on October 22, 1886, covering its main line of railroad, divers leased lines and also certain pledged bonds of other roads (Record, 223). This third mortgage was largely a mere refunding of prior bond issues.

The bill averred that \$4,527,000 of consolidated bonds had been issued for value, and were outstanding in the hands of innocent holders.

Of these, \$350,000 had been issued for new equipment, \$719,000 had been issued in exchange for debentary bonds, secured by the second mortgage of 1882, and \$632,000 for debenture coupons, and \$2,826,000 to acquire \$2,844,000 first mortgage bonds of eleven other railroad corporations. By the express terms of the mortgage such debenture and first mortgage bonds constituted a part of the security covered by the consolidated mortgage and were lodged uncanceled with the trustee. The insolvency of the mortgagor and the inadequacy of the security, and default in coupon payment in October, 1892, and April, 1893, were alleged. The bill prayed for foreclosure and sale subject to prior liens and the appointment of Receivers in the mortgagee's suit so as "to secure the earnings of the railroads to the use of the bondholders." (Record, 238.)

The Court on the same day appointed Receivers under the foreclosure bill, and ordered the Receivers in the Clyde suit to deliver on August 1, 1893, all property and money in their hands to the mortgagee's Receivers, who were required to take over the assets and pay all the just debts and liabilities of the first set of Receivers under the stockholders' bill. (Record, 240.)

The outgoing Receivers in the Clyde suit, on August 21, 1893, filed a report showing their transfer of possession to their successors appointed under the foreclosure bill and asked for the audit and approval of their accounts and final discharge. (Record, 218.)

An order of reference was entered on the same day. (Record, 219.)

Up to the time when the first Receivers were discharged from possession and the passage of their accounts directed, the appellee had intervened solely as an unsecured creditor, had asserted no claim of lien or preference, and had made no objection to the disposition of the receivership income according to the court's orders.

The Special Master charged with such audit filed his report on March 3, 1894, covering all receipts and disbursements for the entire period of the original receivership in the Clyde suit (Record, 220).

It showed that such officers had paid out of their own receipts and earnings operating debts incurred by the mortgagor during the six months immediately prior to the receivership:

Traffic balances	\$122,493 78
Loss and damage claims.....	75,062 65
Pay rolls.....	602,287 89
Material, supplies, &c.....	437,351 90

Making a total payment of ante-receivership debts of.....\$1,237,196 22

The report shows that the receivers, on their appointment, received \$480,427.91, and collected from ante-receivership earnings \$671,363.40, making a total of 1,151,791.31.

The Clyde suit receivers, therefore, not only paid out all the cash received and collected from the earnings of the company before suit brought, but also applied \$85,-404.91 of their own current income to the discharge of the operating debts of the company created before suit brought.

These sums were exclusive of the proceeds of the \$1,000,000 receivers' certificates which were charged upon the mortgaged property and paid out of the sale proceeds.

The report further shows that the original Receivers had disbursed, under specific orders of the court, \$3,253,-956.89 for interest and rentals, and \$481,893.16 for car rental payments (Record, 222).

No exceptions were ever filed to such master's report by appellee or any other creditor, and the same was confirmed on April 13, 1894, and the accounts of the first receivers from June 16, 1892, to July 31, 1893, as stated in their report, were fully accepted and passed, and they and their sureties finally released and discharged (Record, 222).

On February 12, 1894, the Carnegie Steel Company, Limited, filed a formal petition in the foreclosure suit brought by the Central Trust Company, alleging its proof of debt in the original stockholders' and creditors' suit, the subsequent institution of the foreclosure action and the discharge of the first set of receivers and transfer of the properties to Receivers on the foreclosure suit.

It prayed the two causes might be consolidated.

In this application it was for the first time claimed in general terms that its demand should be allowed "equitable priority of payment over the mortgage debt" (Record, 359).

An order consolidating the two causes was passed February 17, 1894 (Record, 364).

March 1, 1894, the Steel Company filed another petition in the consolidated cause, stating more at length the particulars of its claim.

It alleged the rails were sold to the railroad company under a written contract dated June 10, 1891, and were laid in its roadbed.

It contended that it was a supply creditor equitably entitled to have the earnings of the railroad applied to the payment of its claim.

It charged that, both before and after the appointment of Receivers in the Clyde suit, large sums of money were paid out of earnings for interest upon mortgage bonds by reason whereof its claim had remained unpaid.

It claimed that by reason of such diversion of income it had a lien on the mortgaged premises prior to the consolidated mortgage, sought to be foreclosed, and asked to be made a defendant. Copies of the rail contract of June 10, 1891, and the unpaid final renewal notes were made exhibits. The rails were sold on four months' credit with the privilege of two renewals of three months each (Record, 365 to 384).

Appellee was made defendant, and its petition ordered to stand as an answer to the foreclosure bill (Record, 375).

March 8, 1894, the Central Trust Company, mortgagee, filed its answer to such intervening petition alleging that only a portion of the rails were laid in the Danville road, and denying that the claim had any equitable priority over the consolidated bonds, either as to the railroad, its income or the proceeds of sale, but was a mere

merchandise debt contracted exclusively on the personal credit of the Railway Company (Record, 375).

March 16, 1894, appellee filed another amendment to its intervention averring that its claim for rails sold, under Section 2485 of the Code of Virginia, constituted a statutory lien on the franchises, gross earnings, and all the real and personal property of the Richmond and Danville Railroad Company with a priority over the consolidated mortgage of 1886 (Record, 379).

The Special Masters on April 10, 1894, reported as to the amount of the mortgage and other indebtedness (Record, 253).

The debt secured by the consolidated mortgage was stated by them to be as follows:

Interest due October 1, 1892	\$113,183 75
" " April 1, 1893	113,183 75
Principal	4,527,350 00
Total	\$4,753,717 50

A final decree of foreclosure and sale upon the consolidated mortgage was entered April 13, 1894 (Record, 262 to 282).

It was adjudged that the mortgage of October 22, 1886, was legally executed, acknowledged and recorded; that the bonds, coupons and scrip issued thereunder and secured thereby were a valid lien upon the railroads, leaseholds, mortgage bonds and property therein described, and were all equally entitled to the security of said consolidated mortgage.

The amount of the mortgage debt due at the date of such decree was found to be \$5,002,155.81.

The railroad, seven leasehold estates, stocks and bonds described in the mortgage were ordered to be first offered for sale in parcels and then as a unit.

It was expressly provided that the purchaser could renounce any lease described in the mortgage.

The Court reserved the right to require the purchaser by supplemental order to pay all such claims as should be finally decided to be "prior in lien or superior in equity to the mortgage foreclosed in this suit," with the power to retake and resell the property, in case the purchaser should fail or neglect to comply with the Court's order in respect to the payment of any such adjudged prior lien claims. The purchaser or assigns were invested with all the rights of the mortgagee as to resistance of the priority of any such intervention and authorized to appeal from any decree giving it priority.

The net proceeds of sale were ordered to be applied first to the payment ratably of the interest due and unpaid upon the consolidated bonds, and thereafter to the principal of such bonds.

The purchaser was expressly obligated to pay off and satisfy the receiver's certificates issued under the order of June 28, 1892, and all current operating debts and liabilities of the receivers.

No exceptions were ever filed to such decree. No modification or appeal was ever prayed therefrom by the appellee.

The railroad, equipment, bonds, stocks, leases and other property were sold under this decree as a single parcel, on June 15, 1894, to the appellant for \$2,030,000. (Rec., 289.)

The selling masters reported that the purchasers de-

clined to accept the leasehold estates in the Columbia and Greenville, the Charlotte, Columbia and Augusta, and the Richmond, York River and Chesapeake Railroads. (Rec., 291.)

Such sale was confirmed without objection.

In provisional satisfaction of its bid the purchaser paid into court \$75,000 cash, and \$4,513,000 par value of consolidated bonds, with attached unpaid coupons and \$280 in bond scrip.

The court, in the decree of confirmation, again reserved power to charge the property sold, for the payment of receivers' certificates or liabilities or corporate debts prior in lien or equity to the lien of the mortgage foreclosed, as had been originally provided in the foreclosure decree of April 13, 1894. (Rec., 297.)

Conveyance was executed by the masters and possession of all the property sold was delivered by the receivers to the appellant on June 30, 1894. (Rec., 301.)

The Receivers fully reported at the same time the financial condition of their trust. Their cash and collectible cash assets were estimated at \$480,000, while their liabilities for operating, labor and supplies were stated to be almost \$1,005,145.50 (Record, 301).

July 13, 1894, the Court ordered the purchaser to pay into the registry \$455,144.50 cash, to be applied on the balance of unpaid mortgagee Receivers' payrolls and supply debts over and above their cash assets (Record, 306).

On May 19, 1894, the Special Master reported on appellee's intervention that the five renewal notes held by it were a just debt of the railroad company; but such claim was not entitled to any equitable priority over the

mortgage bonds on the authority of the judgment of the Circuit Court of Appeals in *Bound v. South Car. R. R.*, but they reported that it constituted a statutory lien under the Code of Virginia upon the proceeds of sale, inferior to \$1,621,000 of the consolidated bonds which had been actually issued prior to May 1, 1888, when such Code went into effect, and was superior in lien and right of payment to the remaining \$2,906,000 of such consolidated bonds which were issued after the Code took effect (Record, 381).

A stipulation as to the dates of the original issue of the consolidated bonds by serial numbers and the full oral and documentary evidence submitted in the Master's office accompany the report (Record, 386 to 468).

The main rail contract was in writing, executed June 10, 1891, for the sale of 2,500 gross tons steel rails "delivered on board cars at Bessemer, Pa." in July, 1891 (Record, 370, 381).

The railway company agreed to accept all rails so delivered and "to pay" therefor \$30 per gross ton "in its notes at four months from date of shipment without interest," upon presentation at its office, 80 Broadway, New York, N. Y., of invoices and bills of lading covering the same."

The railroad company was to have the privilege of one renewal of its paper for three months, at five per cent. interest and a second renewal for three months at six per cent.

It also had the option of increasing the contract quantity by 200 or 300 tons.

July 21, 1891, 1,656 tons were contracted for at same price, terms and delivery.

October 2, 1891, 200 tons second-quality rails were sold at \$26 per ton.

The statement shows about 4,203 tons in all were delivered, the contract price being \$125,067.39. Except about 184 tons second-quality rails, costing about \$4,792, delivered in October, all rails were delivered in July and August, 1891.

The five notes of the railroad company outstanding and unmatured at the date of the original receivership as filed with the intervention, were as follows :

March 21, 1892,	3 months.....	\$38,251.77
" 24, "	"	35,499.38
April 4, "	"	12,786.16
May 16, "	"	5,355.09
June 7, "	4 "	33,174.99

These were all renewal notes. They bore no interest, showing conclusively that current interest on each extended credit had been paid in cash by the railroad company.

The July deliveries, 1891, amounted to \$33,174.99, the exact amount of the outstanding note, dated June 7, 1892, due in four months. (Record, 374.)

The original four-month note of like amount for the July deliveries matured, excluding grace, say on November 28, 1891. The first three-months renewal thereof fell due February 28, 1892. The second three-months renewal would mature May 28, 1892.

Here the contract option as to renewals ended. It is therefore an indisputable and material fact that the four-months note of June 7, 1892, for \$33,174.99, was not executed under the contract at all, but was a voluntary

fourth extension of personal credit, entirely outside of the written agreement.

The small note for \$5,355.09, dated May 16th, is evidently for the purchase of the second quality rails delivered in October, 1891, under the separate contract of that month, added to the item of \$562.50 under date of August 29th.

The masters reported that the rails were laid upon the following roads:

North Eastern of Georgia	1,108 tons, costing	\$33,174 99
Virginia Midland	.....1,270 " "	37,713 15
Georgia Pacific	.....31 " "	920 56
Richmond and Danville	..1,793 " "	53,258 69

The report is an error as to the last item, as clearly shown by the deposition of W. H. Green, general superintendent, who gave the only testimony on the subject.

On further examination of his rail chart he corrected his first statement, which was adopted by the masters, and testified that only about one and one-half miles or 175 tons of the rails were actually laid on the Richmond and Danville road, and the remainder of the 1,793 tons were laid in the Piedmont road, which is south of Danville and mainly in North Carolina. (Rec., 482.)

The testimony taken upon the reference is filed with the report (Record, 390 to 467).

The mortgagee filed its exceptions to the Master's finding that the rail claim was a statutory lien superior to any of the consolidated bonds (Record, 468).

The Steel Company filed no exception to that portion of the Master's report which found it had a statutory lien on the railroad which was in all things subordinate to \$1,621,000 of the consolidated bonds.

Its single exception challenges the report because the Masters should have given the rail claim priority over all the bonds "on account of diversion of earnings of the said company to and for the benefit of the bondholders and of the holders of securities of said leased and proprietary lines." (Rec., 469.)

On December 16, 1895, the Circuit Court rendered a decree overruling the exceptions of the mortgagee and sustaining the exceptions filed by the Steel Company (Record, 470).

It found that the rails were purchased by the railroad company at the dates and were of the value of \$125,067.39, as stated in the intervention; that they were used by it and were not paid for.

Also,

"that the earnings of said defendant Railroad Company
 "which should have been used for the payment of current expenses, including this claim, have been used for
 "the benefit of mortgage creditors in a sum more than
 "sufficient to pay said claim in full."

"Prior to May 1, 1888, bonds of the Richmond and
 "Danville Railroad Company, known as consolidated
 "bonds, were issued to the amount of \$1,621,000 and
 "that since that date such bonds have been issued to
 "the amount of \$2,906,000."

It was, therefore, decreed that the principal and interest of the claim of the Steel Company, amounting to \$154,895.97, is entitled to priority of payment out of the sale proceeds over all the consolidated bonds.

Also, that such claim and interest,

"by reason of the statutes of Virginia, is entitled to priority of payment out of the fund resulting from the sale
 "of the mortgaged property over such of the bonds secured
 "by the mortgage foreclosed by the decree hereinbefore
 "passed in this cause as were issued after May 1, 1888,
 "being \$2,906,000 in amount."

The decree in the last clause required the purchaser to forthwith pay \$154,895.97, found due for principal and interest on the claim of the Steel Company.

The Southern Railway Company, purchaser, on January 16, 1896, filed its assignment of errors and petition for an appeal from such decree.

An appeal was awarded, *supersedeas* approved, and citation duly issued and served.

On November 10, 1896, the decree of the Circuit Court was affirmed without modification by the Circuit Court of Appeals for the Fourth Circuit, 76 Fed., 492.

The affirmance of the decree in its entirety, of necessity constitutes an unequivocal judicial declaration that the adjudication awarding to \$1,621,000 of the foreclosing bonds a priority under the laws of Virginia upon the sale proceeds over the rail claim was without error.

The opinions discuss only such questions as relate to the other branch of the original recovery in the Circuit Court; that the debt due the intervenor was a supply claim chargeable upon current income and therefore entitled to an equitable priority upon the sale proceeds over all the bonds, because of the misapplication of earnings during the receivership in the Clyde snit.

On application of the purchaser, the record was ordered here for the general review of such judgment of affirmance.

The entire income of both receiverships was used under the express orders of Court, in the payment of current operating expenses, ante-receivership pay roils, traffic balances and operating supplies, interest on underlying mortgages and rental for such other roads as were actually operated by the Receivers and contributed to their gross earnings.

The appellee became a party to and took the benefit of the original receivership suit.

It made no application to modify or vacate any of the orders under which the Court disposed of all the receivership income, and thereby adopted and consented to such use of the income.

It filed no exceptions to the Receivers disbursements, and is concluded by the confirmed Master's report thereon against any subsequent contention that such payments were in law a misappropriation of earnings upon which it had the first right.

It made no effort to change the six months limitation, or have the receivership income applied to the satisfaction of its debt.

In truth, it did not even assert any claim of priority either upon income or road until several months after the Receivers in the Clyde suit had been discharged from the possession and operation of the system.

When the original Receivers were appointed in June, 1892, and the order was made to pay the rentals due upon the leased railroads, being operated by the Receivers, no interest was in default upon the consolidated bonds, and there was no subsisting right of action upon either the bonds or the mortgage.

Such bondholders had, therefore, no matured claim upon the current income of the railroad, or any standing in court to control its disbursement, either directly or indirectly, for their benefit as such junior mortgagees.

After the default in interest payment on such bonds on October 1, 1892, this class of mortgage creditors did not personally or by representation apply in or become parties to the Clyde suit.

During its pendency no part of the earnings were used to pay interest upon the consolidated bonds.

The first application of the consolidated bondholders to assert their lien was the filing of the independent foreclosure bill by their trustee and the appointment of Receivers in July, 1893.

The earnings realized thereunder were exhausted in the payment of current operating expenses, interest on underlying first mortgages, rentals on leased roads, and the deficits of the first receivership.

There were no earnings applicable to the payment of any part of the \$1,000,000 certificates issued by the original Receivers for account of the six months' supply debts. This liability was, therefore, carried over, the sale and imposed directly upon the mortgaged property itself as a paramount charge to be paid by the purchaser.

According to the undisputed facts of the record, no interest was paid to the foreclosing consolidated bondholders during either receivership, and their mortgage security was subordinated to \$1,000,000 of ante-receivership supply claims, and their income was used to pay a large deficit of the first receivers operations.

The Circuit Court on such showing adjudged that the earnings of the railroad should have been used for the payment of current expenses, including this rail claim, but had been inequitably used for the benefit of mortgage creditors.

FIRST. The court orders appropriating the receivership income expressly excluded the appellee's claim from any participation in the current earnings.

In the original order of June 16, 1892, the court, as it had the undoubted power to do, established a limitation of time, beyond which it would not recognize any claim as clothed with an equity to be paid out of the revenues thereafter coming into the Receivers hands.

Only operating expenses incurred within six months of the appointment were thereby made preferential and charged upon the future income received by the court's officers.

The appellee's claim was excluded by that limitation from asserting any equity whatever to be paid by the Receivers.

If the order establishing a general time limit was inequitable, or if special circumstances existed which might give the appellee's claim an exceptional recognition, it was the duty of the claimant to apply to cancel or modify the order which was conceived to be injurious.

Milttenberger v. Railroad, 106 U. S., 286.

U. S. T. Co. v. Wab. R. R., 150 *ibid.*, 304.

Up to the discharge of the first Receivers, the Steel Company made no claim whatever of preference upon income and by its failure to challenge any of the orders authorizing Receivers' disbursements, it consented to such disposition of the earnings.

In the appointment of Receivers in the foreclosure suit it was declared that "nothing in this order contained shall be construed to vacate any of the orders heretofore entered in the case of William P. Clyde and others."

That provision reaffirmed the original and then unchallenged limitation of six months and expressly excluded the Steel Company from asserting that it ever had any preferential claim against the receivership income, or that such earnings had been diverted as against its superior equities thereon.

The point has been recently decided by the Court of Appeals for the Sixth Circuit in *Cent. Trust Co. v. E. T. H. & G. Ry.*, 80 Fed., 624.

A Receiver had been appointed in a creditor's suit. The order limited the Receivers in the payment of supply claims to such as had been furnished within the six months immediately preceding the appointment.

Subsequently a junior mortgage was foreclosed, and divers creditors who had furnished operating supplies more than six months before the receivership sought to establish their claims against the sale proceeds because of alleged diversion of earnings.

It was decided that they had no claim upon the earnings because of the time limitation which was in itself reasonable and clearly within the judicial power to adopt and enforce.

"The appellants present no special circumstances which will justify a departure from this general order under which all such claims have been settled, and we feel altogether indisposed to arbitrarily extend the limit imposed in the sound discretion of the Circuit Court."

It was argued below that as the rail debt was represented by notes which had not matured when the receivers were first appointed, the claim should not be considered as incurred so as to be a charge upon income until the expiration of the credit.

The exact terms of the court direction were to use the current earnings to pay "the vouchers and supply accounts incurred in the operations of said railroad system, at any time within six months prior hereto."

The decision last quoted disposed of a like contention.

"For appellants it is further insisted that the order made by Judge Jackson should be construed as applying to the time when their claims accrued and that in respect of at least parts of one or more of their claims, the supplies were furnished upon a credit of either thirty or sixty days, and did not fall due until after January 1, 1892. The order plainly limited the receivers to the payment of claims for supplies 'furnished' on or after January 1, 1892. The order can bear but one construction. The time of delivery by the seller to the railroad company is the time when they were furnished."

Under the rulings here the Circuit Courts were vested with undoubted power to establish a reasonable limit beyond which claims against the corporation would not be entitled to be protected as "debts against the income."

Claims, to be preferential, must not only be those of the restricted and favor class, but be contracted "a brief period" before the judicial intervention.

Morg. Co. v. Texas, &c., R. R., 137 U. S., 197.

In *Miltenberger v. Logan R. R.*, 106 U. S., 280, it was decided that ninety days was a reasonable limit within which operating claims must have been incurred to be allowed as preferential.

This limit has been adopted in railroad foreclosure cases in the Fourth Circuit.

Fin. Co. v. C., C. & C. R. R. 52 Fed.,
526

Ibid. v. Ibid., 62 *ibid.*, 205.

In *Wood v. N. Y. & N. E. R. R.*, 70 Fed., 941, a four months limit was fixed.

In *Thomas v. P. & R. I. Ry.*, 36 Fed., 808, Justice HARLAN characterized a limitation of six months "as wise and salutary," and refused recognition to claims incurred beyond such period. "Expenses incurred within such reasonable time constitute what are called 'current expenses,' which ought, if possible, to be paid out of the receipts during the same period."

"When, therefore, debts of that character remain unsettled, or are not put in suit for such a length of time as would be deemed unreasonable, it may be fairly presumed that the creditors have ceased to look to current receipts for payment, and have accepted the position of general creditors, who, as such, need have no claims for indemnity upon any special part of the income."

Justice BREWER declared on this point:

"Six months is the longest time I have noticed as given.

"If any person permits a claim to continue longer than that, he certainly has no right to be considered other than as a general creditor, with no preference over a secured debt."

Blair v. St. L. R. R., 22 Fed., 471.

This extreme limit of six months has been adopted in many cases.

Union Trust Co. v. Soutter, 107 U. S., 592.

Ibid. v. Midland Ry., 117 *ibid.*, 463.

Turner v. I., B. & W. Ry., 8 Biss., 315.

Swayne v. W., St. L. & P. Ry., 46 Fed., 38.

Putnam v. J., L. & St. L. R. R., 61 *ibid.*, 440.

C. T. Co. v. E. T., &c., R. R., 80 *ibid.*, 624.

These authorities fully establish the proposition that the Circuit Court had undoubted power when it appointed receivers under the Clyde bill, to declare as a fixed principle of administration, that claims for material purchased by and delivered to the corporation more than six months before the sequestration should be regarded as ordinary unsecured creditors, with no right of preference upon the receivership earnings.

The original receivership was administered to its close on that basis, with no change or effort to modify such limitation order and no claim for preference was interposed by the appellee during that period.

Such being the condition of the record the court had no warrant to decree that the rail creditor had any claim whatever to be paid out of the current receivership earnings, or that as to it there was any diversion.

The order distributing the receivership income excluded appellee's claim from any participation and fixed its status as an ordinary unsecured creditor.

It was not competent for the court, long after this receivership had been fully administered in exact compliance with the terms of its unrevoked orders, to decree preference and payment to a claim incurred about a year prior to the first receivership and nearly two years before the foreclosure suit, on the ground that the first receivership earnings were diverted and should of right have been used to pay a claim that was not asserted as preferential and was expressly excluded by the court's order from any participation.

Second. The testimony and accounts demonstrate that there was no diversion of receivership income, so as to raise an equity in favor of the rail creditor, to be paid out of the sale proceeds in preference to the mortgagee.

(1.) It must be conceded that the appellee was not in a position to assert any preference, based on diversion, until its claim matured in October, 1892.

It had no possible claim upon the income for over a year after the rail deliveries, because of the credit extended.

It was contended that at that date, however, the claim, by its mere maturity, was put upon the footing of an operating expense, chargeable against and payable out of the then current earnings.

This proposition lacks any support from principle, analogy or authority.

It would be a strange situation if during 1891 and nearly all of 1892 appellee was a mere ordinary merchandise creditor, with no equity against the current earnings

but that the maturity of its notes pending a receivership clothed it with a fresh equity and right of preferential payment out of the court's earnings.

Such an equity once effectively waived is at an end.

The rule with regard to diversion and "debts of the income" necessarily means that the current income of 1891 should be primarily devoted to the payment of the current expenses of the same period.

In order to question the effect of the receivers' payments out of their earnings, the appellee is forced to claim that the price of its rails, as an alleged current expense of 1891, when they were delivered, was not a debt of the income of that year, but somehow became a preferred charge upon the current earnings from October, 1892, to July, 1893, or later.

By this method the Receiver's current income becomes doubly saddled. It must pay its own operating charges, and, in addition, the once waived rail liability having released the income current at time of delivery, is revived as a current expense specially payable out of earnings coming into the court's hands nearly two years after the debt was incurred.

(2.) The figures presented to establish diversion relate wholly to the administration of the first Receivers, covering the period from June, 1892, to August 2, 1893.

There is no separation of the figures as of October 10, 1892, when the last renewal note matured.

Up to that date it concedes it had no claim upon the earnings. It cannot on any theory go into the accounting prior to that.

There are, in fact, therefore, no accurate or approxi-

mate figures in the record covering the precise period to which the inquiry as to diversion must properly be restricted. Many of the payments challenged were prior to October, 1892.

When the receivers were appointed in June, 1892, the bonds were not in default. The mortgagee did not obtain the receivership.

Its own bill was not filed and Receivers thereunder installed until August 1, 1893.

The consolidated bondholders did not apply for judicial aid or assert any demand for possession, and received no interest from such first receivers, and should not be charged with the responsibility of their operation.

Morgan v. H. & T. C., 137 U. S., 171.

The distinction in the equitable obligations of the mortgage security, where receiverships have been obtained at the instance of the mortgagee, and those granted to stockholders or general creditors, is well settled.

Swayne v. W. St. L. & P., 46 Fed., 38.

Street v. Mary. Cent., 59 *ibid.*, 25.

Until the mortgagees come into equity with their own application for entry they stand on their vested liens and are in no way responsible, out of their contract security, for the court's administration of the property.

Bound v. S. C. R. R., 47 Fed., 30.

No possible equitable accountability to restore income used by a general creditor's receivership can be charged against a non-applying mortgagee.

The bondholders did not enter until August, 1893, and are not directly or indirectly chargeable with the general

policy or results of the anterior receivership or any restoration of alleged diverted income. This is settled by the case of *Kneeland v. Am. L. & T. Co.*, 136 U. S., 89.

“ They [the bondholders] were not asking it to take charge of the property, or thus impliedly consenting to its management of the property for their benefit.

“ Neither lienholder asking the aid of the court, no obligation was assumed by either in respect to the management of the property as against the other.”

So far as any equitable accountability of the consolidated bondholders for administration, income, disbursements or deficits is involved, the case, on the express precedent last cited, stands precisely as if the receivership began August 1, 1893.

Until that date the mortgagee had not demanded entry or to harvest the income for their own benefit. If the general creditors' receivership had resulted in large net surplus they could not upon established principles have claimed it under the mortgage. Upon like grounds the supply creditor can claim no equity against the mortgage security by reason of the manner in which earnings were disbursed upon which they had no claim.

The distinction was again recognized and enforced in *Bound v. S. C. Ry.*, 47 Fed., 33.

“ But the intervenor has no equity as against the first mortgage and other liens superior to the second mortgage. These classes of creditors did not of their own volition come into equity, and the rule cannot be applied to them to do equity. They can stand upon their legal vested lien.”

Restoration of diverted earnings during the receivership, obtained by a second mortgage was, therefore, refused, as against a non-applying first.

According to the accepted precedents the consolidated bondholders were not chargeable out of their security with the restoration of any diversion during the first receivership, even if such fact was established.

On that footing the appellee has no color of reclamation against the fixed security of the consolidated mortgage.

(3.) Even considering the accounts of both receivership, no diversion of current income chargeable to the consolidated bondholders had been made out.

Dealing generally with the figures reported by the Receivers and explained by Auditor Dunham, it appears, that no interest was paid during either receivership to the consolidated bondholders. Coupons to the amount of over \$450,000 on that mortgage, defaulted during the receivership, were included in the foreclosure decree. (Record, 275.) Interest even on the first and debenture mortgages was also unpaid at the end of the receivership, aggregating over \$480,000. (Record, 430.)

The opinions in the Court of Appeals state as important that the first Receivers received a large sum of ante-receivership earnings upon which the bondholders had no lien.

Dunham (Record, 399-403) gives the exact figures. The first Receivers collected out of earnings prior to their appointment the following sums:

Cash received on appointment.....	\$480,427 91
Collections	671,363 40
"	9,369 66
Total receipts.....	<hr/> \$1,161,160 97

They paid out of their own earnings on preferential labor and supply accounts, traffic balances, &c. (besides the \$1,000,000 Receiver's certificate fund), the following sums: \$1,237,196.22, and \$21,155.39, being a total of \$1,258,351.61, or \$97,190.64 in excess of all they received from company earnings.

The Court also stated that the first Receivers paid over a large sum in surplus cash to the mortgagees' Receivers.

This is true. The order in the foreclosure suit treated the road as a going concern, and consequently it required the outgoing Receivers to turn over all their moneys and assets to their successors, and required the latter to pay all the debts and liabilities of their predecessors.

That account stands as follows, as shown by the official report (Record, 426):

Cash received from first Receivers Aug. 1,		
1893.....		\$141,325 19
Collections on first Receivers' accounts.....	}	9,309 66
		384,473 10
Total.....		<u>\$535,167 95</u>

The mortgage Receivers paid the following operating liabilities of the first Receivers (Record, 427):

Traffic balances.....	\$53,257 20
Damage claims.....	4,163 45
Pay-rolls.....	467,562 79
Material.....	515,877 87
Making a total of.....	<u>\$1,040,861 31</u>

The bondholders' security therefore instead of having the benefit of any net cash from the first Receivers, actually assumed the burden of and paid a deficit on that account

of \$505,693.36 over and above all receipts from that source.

The expenditures for construction and new equipment during the receivership were inconsequential.

The claim is made that the foreclosing bondholders are chargeable with the interest paid during the receivership to mortgage bondholders senior to their own, and the sale fund in Court should therefore make good such payments.

The Supreme Court disposed of that contention in *St. Louis R. R. v. Cleveland R. R.*, 125 U. S., 668:

"It cannot be said that the application of earnings to
 "payment of interest on the first mortgage bonds is
 "chargeable to the holders of the second and third mortgage bonds. The latter alone are interested in the
 "fund for distribution. That fund in the sense of the
 "rule sought to be applied, cannot be said to have been
 "benefited by the payment to the other bondholders
 "from the gross earnings applicable to the payment of
 "rent. The equity of the petitioners, if in fact it exists, is against the holders of the first mortgage bonds,
 "who have actually received the money to which it
 "claims to be equitably entitled."

This authority was followed in *Cent. T. Co. v. E. Tenn., &c., R. R.*, 80 Fed., 624.

A large part of the interest on car leases and senior mortgages was paid by the first Receivers before the rail claim matured in October, 1892.

Interest payments could not therefore be a diversion as to it.

It was in addition insisted that the interest, rentals and dividends paid on the leased lines and equipment leases during such receivership was a diversion for the benefit of the foreclosing bondholders, and the sale proceeds should be chargeable with restoration of such sum.

It has already been shown that the user of the leased lines was not at the instance of the consolidated mortgage bondholders, and their security cannot be charged with any deficit resulting from compliance with the Court's orders in a suit not brought by them and when their debt was not in default.

These rental payments were all made under standing orders of the Court.

The appellee made no attempt to modify them or intercept the expenditures on that account, and must therefore be conclusively presumed to have accepted and approved them as being for the best interests of the whole trust estate including its own.

Cent. Trust Co. v. Wabash R. R., 34 Fed., 259.

Miltenberger v. Log. R. R., 30 *ibid.*, 332.

Kneeland v. Am. L. & T. Co., 136 U. S., 89.

Calhoun v. St. L. R. R., 14 Fed., 9.

Especially should this be the rule when the intervenor, in order to establish a claim for diversion, claims the benefit of the valuable leases as feeders largely aiding the gross earnings of the entire system.

The income of the controlled lines and the use of the equipment cannot equitably be availed of without accepting the burden of their rentals as an expense of current management, and not a loss to be made good out of the specific security of mortgagees who did not apply for the order and whose own current income was depleted several hundred thousand dollars to pay the arrearages of the first Receivers.

The controlling facts therefore are:

The foreclosing bondholders received no interest during either receivership.

There was little expense for improvement or new equipment.

The first receivers paid out of their own current income upon the company's labor and supply debts \$97,190.64 more than they received from the ante-receiver ship earnings.

The mortgagee Receivers paid out of their current income \$505,693.36 on account of the debts of the first receivership over and above all credits from the latter's earnings.

The bondholders purchasers, in order to protect their security, paid into Court \$455,144.50 to liquidate the deficit of the last Receivers' operating debts after application of all their earnings.

In addition, they paid on the final sale \$1,000,000 Receivers' certificates and interest, issued as a paramount lien on the road to pay preferential labor and supply debts accruing in the six months prior to June, 1892. Upon such a showing, the bond creditors' security cannot be further oppressed by any additional assessment.

If the intervenor was in position to challenge the disbursement of revenue during the entire period of the general creditors' receivership the account as to diversion would approximately stand as follows:

Corp. earnings received.....	\$1,151,791 31
Construction done.....	19,717 05
New equipment bought	74,733 28
	<hr/>
	\$1,246,341 24

Receivers paid, <i>ante</i> receivership, traffic debts, damage claims, rolls and vouchers	\$1,237,196 22
The consol. bondholders have assumed and paid Receivers' certificates used to pay preferential debts	1,000,000 00
Total	<u>\$2,237,196 22</u>

The restoration out of receivership income and the corpus on any approved method of accounting exceeds nearly a million dollars what the law would in any theory recognize as diversion to the prejudice of a supply creditor.

Even if the equipment, sinking-fund and car-trust payments, and all construction expenditures on outside lines, should be added together and charged against the junior foreclosing bond-holders, the funds advanced by them as above stated would still exceed the total claimed diversion by several hundred thousand dollars.

Neither they or their security have ever inequitably received any money or expenditure to which they were not entitled and the appellee was.

Third. When a mortgaged Railroad Company purchases \$125,000 worth of steel rails on an optional credit of ten months, subsequently extended for four months more, such claim is not a debt of the current income and cannot displace the mortgage lien, either as to income or sale proceeds.

The strong tendency of all the recent decisions in the

higher Courts has been to repudiate the theory of unlimited judicial discretion and to severely restrict the allowance of preference over recorded mortgages to a few exceptional classes of strict operating expenses, incurred on the faith of current payment and within a brief period before the mortgagee's application for a Receiver.

The Courts speak of the beneficiaries of this bounty as "a favored class," such as "materialmen and laborers" and some few others of similar nature."

Morgan v. Texas Cent. R., 137 U. S.,
171.

F. L. & T. Co. v. Pine Bluff R. R., 21 S.
W., 552.

Mr. Justice HARLAN restricted the claims fairly within the scope of such protection to "the current debts, the "daily and monthly expenses" which rely for payment on the daily and monthly earnings.

Thomas v. P. & R. I. R. R., 36 Fed.,
808.

The test applied in *Kneeland v. Am. L. & T. Co.* 136 U. S., 89, to a claim of car rental for preference as a current operating expense, is conclusive here.

"No one is bound to sell to a railroad company or to "work for it, and whoever has dealings with a company "whose property is mortgaged must be assumed to have "dealt with it on the faith of its personal responsibility, "and not in expectation of subsequently displacing the "priority of the mortgage liens."

In *Huidekoper v. Loco. Works*, 99 U. S., 258, it was decided that the vendor of a locomotive "occupied the "position of a general creditor with no special equities "in its favor."

This principle applicable to these large transactions on long agreed credits was subsequently enforced in *Thomas v. Car Co.*, 149 U. S., 95:

“ The case of a corporation for the manufacture and
 “ sale of cars, dealing with a railroad company, whose
 “ road is subject to a mortgage securing outstanding
 “ bonds, is very different from that of workmen and em-
 “ ployes, or of those who furnish from day to day sup-
 “ plies necessary for the maintenance of the railroad.
 “ Such a company must be regarded as contracting upon
 “ the responsibility of the railroad company and not in
 “ reliance upon the interposition of a Court of equity.”

The affirmance by the Court of Appeals in this cause was in effect a reversal of its own ruling upon the intervention of the *Lack. Steel Co. in Bound v. S. C. R. R.*, 58 Fed., 473.

There a manufacturer had sold rails to a company, and after an agreed credit of about eight months and later a ten months' extension, claimed a preferential allowance against the *corpus* of the road on the ground that its debt was an “ operating expense,” and there had been a diversion of income.

It was decided that it had waived all claim upon current earnings by the credit given and renewed, which was in law a consent to use the current earnings for bond interest and otherwise.

The conclusion reached was:

“ The debt of the Lackawanna Company was an or-
 “ dinary merchandise debt, evidenced by notes which
 “ were renewed from time to time. It had no stronger
 “ equity or claim upon the earnings than had those who
 “ had advanced money to pay the interest upon the
 “ bonds.

“ The claim is quite different from those ordinary and
 “ necessary current expenses of operating the railroad
 “ contracted but a short time before the receivership,
 “ and which, by the sudden action of the Court, are left
 “ unpaid.

Enforcing the doctrine ruled in *Thomas v. Car Co.*, the Circuit Court of Appeals, in the 7th and 8th Circuits have excluded car rentals from preference as debts of the current income.

Mather Stock Co. v. Anderson, 76 Fed.,
 164.

P. R. Car Co. v. A. L. & T. Co., 84 *ib.*,
 18.

In *Lack. I. & S. Co. v. F. L. & T. Co.*, 79 Fed., 202, the Circuit Court of Appeals for the 5th Circuit followed the ruling in *Bound v. S. C. Ry.*, and held that a large claim for steel rails sold on several months credit was not an operating supply claim entitled to preferential payment out of the receiver's income or the sale proceeds under a foreclosing mortgage.

The claims allowed preference in *Burnham v. Bowen*, 111 U. S., 776, and *Va. Coal Co. v. Cent. Geo. R.*, 170 U. S., 359, were for coal, which is an undoubted and necessary operating supply.

No original or extended credit was contracted for, but reliance for payment was had upon the current income.

4,200 tons of heavy rails is sufficient to re-lay about forty miles of road. It is not like coal—a current supply for moving trains which is consumed in the operation. The new rails take the place of the lighter rail already in the track, and constitute by such substitution, a permanent part of the mortgage security.

It has always been contended by the appellee that steel rails bought by the receivers was not an operating supply, but such a distinct betterment as to constitute a diversion of the income.

The rails sold by the appellee were not "current supplies" or "necessary to enable the road to be operated as a continuing business," within the meaning of those terms in the last ruling of this court, but purchased to be permanently annexed to the road bed of a mortgaged railroad as an improvement thereto.

It was not a month to month supply debt in the ordinary course of the railroad's operations, but an extraordinary expense incurred solely to permanently improve the fixed mortgage security.

The appellee also fails on the other test of a preferential claim as defined by this court in *Va. Coal Co. v. Cent. of Geo. Ry.*

To award a preference it is indispensable that the supplies should not be purchased simply on the personal credit of the railroad company, "but upon the tacit or express understanding that the current earnings would be appropriated for the payment of the debt."

By agreed credit and extensions the appellee carried its debt on the mere personal responsibility of the railroad company, and payment of interest from July, 1891, to October, 1892.

By express contract it absolutely released any claim for payment out of the current earnings of the system during that period, and left the railroad company a free hand to dispose of its income at will, without any liability to ever account for such disbursements.

Whatever other supply creditors might assert, this par-

ticular rail creditor has forever precluded itself from claiming that a dollar of the earnings prior to October, 1892, should have been used for the payment of its claim. The agreed credit had not expired, its debt was not due and it had expressly contracted that it need not be paid out of current income.

It was bound to take notice that during that period three interest payments would mature upon the consolidated mortgage, October, 1891, and April and October 1892.

Its conduct and contract must be held to be an express consent to the use of such current earnings for the payment of maturing coupons and all other *bona fide* corporate debts.

Having abandoned all resort to the current income, it fails in an essential condition and loses all claim to preference.

Its contract and its subsequent voluntary extension of credit for four months is conclusive that it sold the rails to a railroad company "on the faith of its personal responsibility and not in the expectation of displacing the priority of the mortgage liens" but with an express release of all claim on current income.

The principle enforced in *Kneeland v. Am. Loan Co.*, 136 U. S., 89, forbids that the mortgagees' rights shall be postponed to any such unsecured indebtedness.

Fourth. As the court adjudged that the rail creditor had a statutory lien under the laws of Virginia upon the railroad and its earnings which was subordinate to a large portion of the consolidated mortgage debt, it was error in the same decree to enforce an equitable charge superior to the entire mortgage debt:

The decree in one clause adjudges that, according to the state law, the appellee's debt is junior to \$1,621,000 of the mortgage debt, which is sufficient in amount, as will be shown, to absorb all the net fund distributable to creditors. In the second clause it decrees that the entire rail claim "is entitled to priority of payment out of the fund "resulting from the sale of the mortgaged property" over *all* the bonds secured by the foreclosed mortgage.

The situation is unique. It stands in judgment that under the statutes of the state where the mortgaged property is situate, a large part of the mortgage debt outranks the lien of the appellee on road and earnings.

It is, however, adjudged that by the law of the court the rail claim is paramount to all the bonds.

Thereby a valid local statute which by the decree legislates priority to a part of the bonded debt is in effect judicially repealed, an important clause of the decree is nullified, and full payment is ordered of an actually adjudged second lien in preference to one that is admittedly first according to the law of the Commonwealth.

It is submitted, with entire respect to the Circuit

Court, that its decree and order of payment is an unwarrantable extension and misapplication of what was decided in *Fosdick v. Schall*.

That case involved consideration in respect to the discretionary power of an equity court, *invoked by a railway mortgagee*, over the current income during the receivership, *in the absence of State legislation regulating the subject*.

This appeal involves no such question. Here the State has enacted statutes declaring with precision what claims shall constitute liens on railroads, their franchises and *earnings*, and under what conditions they arise and can be asserted and over what mortgages such statutory claims shall have priority. The appellee pleaded and claimed rights under this statute.

It is of the essence of the sovereignty of each State that its Legislature has plenary powers to establish the conditions upon which domestic corporations may exercise their franchises, and to enact the only regulations by which real estate within the territorial jurisdiction can be aliened or encumbered.

Clearly, it is within the power of each State to legislate as to what particular claims shall constitute specific liens upon the property, franchises and earnings of its own railroads, and also to establish the precise methods by which such liens must be perfected and enforced, and what rank they shall be allowed.

Whenever a State, in the exercise of its undoubted legislative power, has enacted statutory regulations covering the whole subject-matter of liens on railroads and their earnings, and the manner in which they must be created and enforced, and the priority of such claims in

respect of mortgage or other liens, there can be no occasion for any exercise of judicial discretion over the same subject.

Whatever the State law makes liens on property and earnings are such, and must be paid in their statutory rank if perfected and asserted in compliance with the statutory conditions. Whatever claim is not within the statutory description, or is not made effective by the statutory methods, is not a recognizable or enforceable lien, and no Court, State or Federal, possesses any jurisdiction, on some supposed principle of general equity to ignore and repeal a valid State law whereby the property rights of creditors have been absolutely determined.

If the State law fixes liens and priorities on railroads and their income, there can be no others born of mere judicial discretion.

The expression of one is the exclusion of all others.

Such statutes regulating liens on realty constitute rules of property and exclude all judicial action in disregard thereof.

Brine v. Ins. Co., 96 U. S., 635.

The sole judicial function is to administer the State law on the subject of railroad liens and priorities as it exists on the statute book, and proceed no further.

In *Trust Co. v. K. C. W. & N. R. R.*, 53 Fed., 191, it was said:

“It seems probable that the Courts will not have to
 “deal with the question on general principles of equity
 “much longer. Some of the States have already passed
 “acts giving all obligations incurred in the construction

“ and operation of a railroad priority over mortgages and
 “ similar statutes will probably soon be passed in other
 “ States, unless the practice and decisions of their Courts
 “ shall render them unnecessary.”

The very point has been decided by the Supreme Court of Georgia:

“ It seems to us plain that the object of the Code
 “ would be frustrated and virtually defeated if a con-
 “ tractor who has secured a lien, but failed to enforce
 “ it in the manner prescribed, can abandon that lien and
 “ *fall back upon an alleged equitable lien involved in the*
 “ *very same state of facts out of which his legal lien*
 “ *arose, and thereby postpone or defeat a mortgage upon*
 “ *the railroad, duly recorded and foreclosed.*”

“ We entertain no doubt that the law contemplates
 “ that a contractor to whom it gives a legal lien upon a
 “ railroad, and who has nothing to do in order to take
 “ the benefit of it but to enforce it in the way pre-
 “ scribed, *shall have no other lien either in addition to*
 “ *it or as a substitute for it.*

“ But with that system, and the relation to it which
 “ this contractor occupies, we deem it perfectly clear
 “ that he is restricted to his statutory lien, and must en-
 “ force that or none at all.”

F. L. & T. Co. v. Candler, 18 S. E.,
 540.

The decree in terms awards the appellee the statutory lien which it pleaded. The Court also construed the Code, and on the basis of that interpretation fixed its priority as that of a second lien junior to a part of the mortgage debt.

No exceptions were ever filed to the master's report on

this point, and no cross-error was assigned on this clause of the decree.

Having thus read the lien law and its results into the rail purchase, upon what possible principle of law can the Court then thrust the legislation out of the transaction, reject the mortgage priorities established by the statute and create and arbitrarily enforce an inconsistent, so-called equitable priority?

Stated in plain words, this is a practical repeal of legislation and the substitution of a scheme of distributing a fund, which, according to the judicial conception, is more consonant with equity than that provided by the discarded statute.

The all-sufficient answer is that the courts have no power whatever over the subject except to enforce the law as it exists.

"Every departure from the clear language of a statute is, in effect, an assumption of legislative powers by the Court."

Brewer v. Blougher, 14 Pet., 178.

If the rail claim of petitioner was primarily of such nature that it could have been lawfully perfected as a statute lien, but by the act it is subordinated to all or any part of the mortgage debt, it is submitted that it is not within judicial power to decree to the identical claim the very priority of payment which the statute expressly disallows.

Mere equitable discretion cannot be properly invoked to accomplish a priority of payment which positive legislation forbids.

Virginia has enacted laws covering the whole subject

of the creation, perfecting and enforcement of supply liens upon railroads *and their income*. It has established their rank and priority in respect to mortgages on the same property.

The function of an equity court in the enforcement of a right exclusively of statutory origin arises out of and is restricted to the specific legislation.

“ Whenever the rights of parties are clearly defined
 “ and established by law, equity has no power to change
 “ or unsettle those rights or that situation, but in all
 “ such instances the maxim ‘ *Equitas sequitur legem* ’ is
 “ strictly applicable.”

Magniac v. Thomson, 15 How., 281.

Hodges v. Dixon Co., 150 U. S., 182.

Thompson v. Allen Co., 115 *ibid.*, 555.

The Court's decree has in express terms adjudged that under and by the State law invoked by appellee a portion of the mortgage debt is entitled to priority over the appellee's claim.

Certainly the opinion in *Fosdick v. Schall* furnishes no precedent for an equity court to assume and exercise the discretionary function of repealing State laws and overturning admitted statutory rights and priorities which have been in the very litigation expressly adjudged to exist.

“ Stripped of its verbiage this doctrine is that because
 “ the Court has control of a fund brought to it for dis-
 “ tribution it may give it away as it pleases. If it means
 “ that, the power of the Court would indeed reach the
 “ case of these petitioners; but it would make the judge
 “ in equity an arbitrary tyrant, and none the less so be-

" cause the tyranny disguised itself as a judicial command."

Mat. of Atty.-Gen. v. N. Am. Ins., 91 N. Y., 64.

Appellant denies the existence of any judicial power to substitute and enforce its own discretionary priorities in lieu of those established by law.

FIFTH. As the decree adjudged that \$1,621,000 of the consolidated bonds had an express statutory lien prior to the claim of appellee, the Court had no rightful power to deprive them of that adjudged priority by ordering the payment of the rail claim in full out of a fund insufficient to pay such prior bonds.

Having actually decreed such bond priority in obedience to an express law establishing a rule of property, all judicial action in disregard thereof was prohibited.

Brine v. Ins. Co., 96 U. S., 635.

By one clause of the affirmed decree the intervenor was adjudged to be entitled only to come upon the surplus of the net sale proceeds after full satisfaction of the prior \$1,621,000 bonds and interest.

The record demonstrates there is no surplus.

The sale was for \$2,020,000, including the Washington property, leaseholds in roads outside the State, \$1,351,000 debenture bonds and \$2,844,000 first mortgage bonds on other railroads.

The Code did not give and the Court did not award,

the least semblance of lien to appellee upon any of these outside properties and securities. They were undoubtedly valuable and contributed largely to the fund in court.

The debenture bonds were secured by a mortgage prior to the consolidated.

Even without any recoupment on that account, the entire net fund is still insufficient to discharge the principal and accrued interest of the \$1,621,000 bonds adjudged to be first entitled to payment.

After deducting from the gross bid \$75,000 cash paid the Masters for costs and expenses, and \$455,144.50 paid in to discharge the deficit of Receivers' operating debts—making a total credit on the bid of \$530,144.50—there would remain to be distributed under the decree on mortgage and other liens only a net surplus of \$1,499,855.50 of the unit bid for the railroad and all other property. The amount due for principal and interest of the admittedly preferred \$1,621,000 consolidated bonds was at time of decree \$1,800,000.

This, also, leaves out of the reckoning any allowance for the \$1,000,000 Receivers' certificates which were by decree constituted a paramount lien upon the railroad prior to all bonds and claims and which were also paid by the purchaser. On the accounting between the consolidated bonds adjudged to hold a superior rank and the statutory rail lien, the former were under no obligation to pay off the certificates at their cost and thereby relieve the appellee as a gratuity.

It is clear upon every test afforded by the undisputed figures that, upon the adjudication of statutory lien, the fund on which the rail creditor was decreed a postponed

lien was inadequate to pay the adjudged first rank bond claim of \$1,621,000 and interest.

Under such circumstances the peremptory order to pay a second charge out of a fund not sufficient to pay an adjudged first lien was an unjustifiable abrogation of the very priority which had been finally decreed as a statutory right to a moiety of the bonds.

SIXTH. The affirmed decree erroneously severed the single lien of a railway mortgage and separated the bond issue into preferred and deferred obligations.

Such a mortgage takes rank as of its record.

This principle of absolute equality of all the bonds issued under the trust deed is of the very essence of such a security and cannot be broken in upon by any judicial construction, subsequent contracts, acts of the parties or legislation.

Pennock v. Coc, 23 How., 117.

Jackson v. Ludeling, 21 Wall., 616.

Stanton v. A. & C. R. R., 2 Woods, 523.

Ames v. Railroad, *ibid.*, 206.

State v. Cobb, 64 Ala., 127.

Barry v. M. K. & T. R. R., 34 Fed., 829.

Such a basis of credit would be absolutely valueless if it was not held to be what it recites, a common security for the ratable benefit of a class of beneficiaries equally entitled to share therein.

The consolidated mortgage in the first article declares:
"this mortgage shall be a security for the whole or any

“ part of the amount of the bonds authorized to be issued
 “ as herein aforesaid and all bonds issued hereunder,
 “ shall be equally secured hereby without regard to the
 “ time when the same may be issued.” (Record, 63.)

In a recent Pennsylvania case, the non-severable nature of such security was rigidly enforced.

“ The bonded debt is a unit, so far as the duties and
 “ powers are concerned. He must regard the bondhold-
 “ ers as a class, and not as individuals.

“ It has been held to be a presumption of law that all
 “ the bonds were issued at the same time which were
 “ secured by the same mortgage, and that the fact that
 “ they were numbered consecutively gave no priority to
 “ any and interfered in no manner with the equality of
 “ their holders on distribution. That distribution must
 “ be made *pro rata* is well settled.

“ What may be realized by such proceeding belongs
 “ to the whole class and must be distributed *pro rata*.”

Com. v. S. & D. R. R., 122 Penn. S., 306.

The Virginia Code regulating liens on railroads and their earnings, provides that no mortgage deed of trust, etc., *executed after* the taking effect of such code on May 1, 1888, shall defeat or take precedence over said lien.

Va. Code, Sec. 2,485.

Newgass v. A. & D. R. R. 56 Fed., 676.

To construe the section to give priority to so many of the mortgage bonds as were actually issued prior to the code is not only not warranted by the text of the act, but is in plain disregard of its express words; is at war with established legal principles; would be destructive of this class of negotiable securities; is incapable of practical

enforcement and if adopted, would render the act plainly unconstitutional.

It is an elementary canon of construction that it is not allowable to interpret that which has no need of interpretation.

"When the words of a statute have a definite and precise meaning, such meaning cannot be extended or restricted under the guise or pretext of interpretation."

The act does not even mention bonds or remotely allude to the date of their issue as constituting any test of priority of the supply lien. The section established priorities as between certain written instruments required to be recorded, such as mortgages, deeds of trust and conveyances on the one hand, and recorded notices of labor and supply liens on the other. The section as interpreted only deals with and postpones "mortgages, deeds of trusts, sales, conveyances, etc., executed since May 1, 1888." Over such subsequently executed mortgages and other deeds and none others, the newly created supply lien is to take precedence.

The words, both in their ordinary and legal significance, are susceptible of but one meaning. The test of priority is not the date of the issue of bonds or of advances under mortgages, but is determined solely by the execution of the mortgage or trust deed itself. The statute does not attempt to displace, postpone or to any extent impair, or even deal with, mortgages executed before May 1, 1888, any more than to defeat absolute conveyances executed prior to that date.

The words of the section are express and unambiguous and must be accepted as they stand. The mort-

gage here was executed and recorded in 1886, long before May 1, 1888, when the Code took effect, and therefore, is not in any way within the purview of the act. Any mortgage executed prior to the adoption of the Code continues to stand upon its vested rights, and must as to all the debt it secures "defeat and take precedence" over the supply lien.

The only statutory test of preference is the execution of the mortgage, a single fact to be settled by the public records. The dates of different bond sales can only be laboriously ascertained by private investigation and testimony to determine the priorities.

The lien law would without doubt be read into all mortgages executed after it became operative, as all parties would then be chargeable with knowledge of its provisions, and would be conclusively presumed to have contracted their obligations with submission to its terms.

For like reason the lien statute, restricted by its own words to mortgages executed after it took effect, cannot be incorporated into, postpone, or split up a mortgage executed and recorded over a year and a half before there was any law under which a material creditor could under any circumstances obtain a lien upon a railroad.

The Code cannot be construed so that a single debt secured by a single mortgage is severable. This result is not warranted by the words of the statute, is inconsistent with settled rules of law, would be wholly impracticable in method and would greatly impair the marketable value of such securities.

The Code in plain words deals with a mortgage as a single written security, and not with the dates when the bonds were issued thereunder. One executed before the

Code wholly defeats and takes precedence of the material lien for the entire secured debt, no matter when the bonds were issued. If executed afterwards, the mortgage and the whole debt thereby secured is postponed to all valid material liens. There is no warrant in the law for any severance of the mortgage debt and the preference of a portion of the bonds over the supply creditor and then award the latter's claim a priority over the remaining bonds.

The Code does not expressly or by any fair intendment operate to confiscate the bonds subsequently sold under a mortgage security executed prior to the lien law. It would thus result that a moiety of the mortgage debt would have the security of a first lien, the supply creditors the second and the balance of the mortgage debt would be reduced to the third rank. Neither reason or authority justify any such dealing with the single lien of a mortgage when its priority is based upon and determined by its execution and record.

The *habendum* clause in the mortgage runs to the trustee "for the equal *pro rata* benefit and security of
 " all the holders of said bonds secured hereby, without
 " any preference or priority by reason of priority in time
 " of issue thereof."

The provision of the mortgage regulating the distribution of the proceeds of sale declares that they shall be applied to the ratable payment of the interest and principal of the bonds "without preference, priority or distinction of one bond over another." (Record 71.)

It is, therefore, legally impossible under the mortgage foreclosed that there can be two classes of bondholders, one holding a lien as of October, 1886, and the other

an inferior lien later than May, 1888, and postponed to any and all ranking statutory labor and supply liens.

Clafin v. Railroad Co., 4 Hughes, 12, determined the precise question. Certain first mortgage bonds had been retired by the railroad company and were reissued for value after a series of second mortgage bonds had been negotiated. The latter's claim of priority over the reissued firsts was rejected.

Chief Justice WAITE said, that such bonds were a kind of public funds.

“ When in the hands of the company their lien under
 “ the mortgage was suspended, but the moment they
 “ were out in the usual course of business they again
 “ took effect *as of the time when the mortgage was*
 “ *given.* Any other rule than this would materially im-
 “ pair the marketable value of this class of instruments
 “ and tend to defeat the very object of their execution.
 “ The whole issue of such bonds must be treated as of
 “ the date of the mortgage without regard to the time
 “ they were actually put out, unless the contrary is clearly
 “ expressed.”

The doctrine of the Newgass opinion and of the decree under appeal that all buyers of Virginia railroad bonds after May 1, 1888, were charged with notice that supply creditors were entitled to priority of payment over bonds thereafter issued under mortgages executed and recorded before the Code took effect, would revolutionize the whole law of negotiable securities.

In *Cent. Trust Co. v. Lou., &c. R. R.*, 70 Fed., 282, the court upon an elaborate discussion of the precedents refused to follow the ruling in the Newgass case because it was opposed to the weight of authority.

By the settled laws regulating negotiable securities no such constructive notice or duty of inquiry as to the date of the original issue of an obligation is cast upon the purchaser who buys bonds in the open market.

In such event the bonds are, whenever bought, entitled by an express and continuing valid covenant of the mortgage to an equal share of whatever security and priority is afforded by the recorded mortgage to any and all other previously issued bonds.

There is no evidence or finding that the whole or any part of the postponed \$2,906,000 consolidated bonds issued after May 1, 1888, are now held by those who obtained them directly from the mortgagor.

On what principle can the doctrine of the Newgass case be applied to postpone the innocent holders of such securities bought in open market?

Applying the doctrine to this controversy, \$1,621,000 of the mortgage bonds carried a lien as of October, 1886, and were superior to and should be fully paid out of the proceeds of the mortgage property before any statutory liens for supplies. The other \$2,906,000 bonds, with the same date and recitals, instead of enjoying an exactly similar priority with others of the issue, as the mortgage expressly covenants, solely because they were not originally sold by the mortgagor until after May 1, 1888, are forever reduced to a third lien and postponed to an indefinite and unlimited statutory liability for material debts which can be perfected into second liens.

Obviously, if the enactment of a lien law works such a result upon the bonded issue of a prior mortgage, the \$1,621,000 bonds issued before the lien law was enacted would be worth far more per bond in the market on their

merits as first lien bonds than the others, which though certified under the same indenture, as entitled to an exactly similar security, were not actually issued for value until after the lien law and are for that reason reduced to only third lien bonds. How could any intending purchaser of such securities in the open market distinguish between the first and third lien bonds of the same series or determine from the face of a bond the date of its actual issue or that its recitals were false and it was in law not entitled to a lien until after all material claims had first been satisfied?

What knowledge would they have or could they obtain that any particular \$2,906,000 bonds had in fact been issued by the corporation after the passage of such lien law? While those who made such original purchases direct from the mortgagor might have such notice, there is no known principle of the law merchant which will charge either first or remote purchasers from such original takers with any constructive knowledge of the date of the actual first issues of such bonds.

The serial numbers on the bonds furnish no evidence of the time of issue. That is no part of the obligation, but is an incidental and wholly unessential characteristic.

Elizabeth v. Force, 29 N. J. Eq., 587.

In a somewhat similar controversy a contractor attempted to charge the duty of inquiry on the part of bondholders and to establish guilty notice because of his actual work on the railroad, and thereby postpone mortgage bonds not in fact issued by the company until after he had begun the construction for which he claimed a senior lien. His contention was that when his work began no money had been advanced under the mortgage security, and it did not in law exist until the bonds were issued.

His claim of priority was refused. The court held:

“ It would be out of the question to ascertain the
“ state of the record or of the company’s affairs each
“ time a bond was about to be sold.”

“ If this were made the duty of purchasers, it would
“ prevent the sale of such securities altogether, or at
“ least confine their purchase to such large concerns as
“ could buy in bulk after due and careful inquiry. Even
“ then the facts would be open to doubt at every subse-
“ quent sale. Thus their value would be entirely re-
“ duced. For these and similar reasons, the whole issue
“ of such bonds must be treated as of the date of the
“ mortgage, without regard to the time when they were
“ actually put out, unless the contrary is clearly ex-
“ pressed.”

Reed’s Appeal, 122 Penn. S., 574.

As it has been strongly put:

“ If the purchaser of a bond in New York, in Amster-
“ dam or London is bound to inquire whether the bond
“ in fact was executed by the company contemporaneously
“ with the execution of the mortgage, or whether, before
“ the signing or the negotiating of the bonds, liens of
“ laborers or materialmen may not have attached to the
“ road, it is apparent that the value of these securities
“ would be much depreciated and all industries which
“ depend upon the raising of means through negotiation
“ would be paralyzed.”

The doctrine of constructive notice or the duty of mak-
ing any inquiry whatever beyond the face of the instru-
ment bought has no place in the law protecting the pur-
chasers of negotiable securities.

The law merchant recognizes no principle which would in practice destroy the negotiability of such securities.

Simons v. Goodman, 20 How., 343.

When it is attempted to effectuate by decree the theory of severance of a mortgage debt into distinct classes with variant liens and priorities, its unsoundness and danger become apparent.

It would be a revolutionary innovation on equity procedure in foreclosure suits to adjudge the liens of any of the mortgage creditors from any date or event other than its original execution and registration.

The sale proceeds would no longer enure ratably to the bondholders as a class; but, in order to finally determine what particular individuals were respectively the holders of the preferred \$1,621,000 or of the postponed \$2,906,000 bonds, so as to make uneven distribution, the court would be forced to investigate the origin of each of the 4,527 bonds and determine whether it was issued before or after May 1, 1888.

The remote innocent holders of the latter class would suffer a confiscation of their liens solely because they would be chargeable with constructive notice that the bonds dated and equally secured by mortgage of October, 1886, and bought by them in open market without further notice, were, in fact, not originally issued until after May 1, 1888.

If the railroad company in July, 1887, had executed and recorded a mortgage for \$2,500,000 junior to the consolidated and had issued all the bonds thereunder prior to the adoption of the code, it stands fully confessed that such mortgage of 1887 would as to its whole debt be prior in lien to the intervenor's claim under the

code of 1888. It is equally incontestible on general legal principles and the authorities cited that, as between the two mortgages of 1886 and 1887, all the bonds issued under the consolidated mortgage would have a priority over the latter, notwithstanding the fact that some or even all of the bonds secured by the consolidated mortgage were not actually issued for value until after the junior mortgage had become a recorded lien on the same premises.

How could a foreclosure decree be possibly framed on the theory of the recovery below, which would as between the mortgage and material liens devote the proceeds of the sale, first to the full payment of all the consolidated bonds, whenever issued, before any payment on the supposed junior mortgage of July, 1887, and yet should at the same time adjudge that the intervenor's lien for rails was inferior in rank to the whole debt secured by the junior mortgage of 1887, but superior to a part of the bonded debt under the mortgage of 1886?

This would be the inevitable result of the doctrine when applied. The existence of any such inconsistent priorities is a legal paradox, and demonstrates that the theory of severance and priority is unsound and impracticable.

By the decree under appeal the mortgage is severed and some of the supposed equal beneficiaries in a common security would, out of the proceeds, if sufficient, realize par and interest on their bonds, and the remaining *cestui que trusts* would be remitted to the surplus, if any, remaining after satisfaction of statutory liens.

On what possible principle could equity thus subvert

the whole scheme of a mortgage which expressly covenants as one of its essential and continuing trusts that all bonds of the issue shall be equal as to security and payment, and that any proceeds of sale shall be applied to their ratable payment "without preference, priority or distinction of one bond over another"?

There were 4,527 consolidated bonds issued. Each bond was necessarily entitled to draw a four thousand five hundred and twenty-seventh part of the net sale proceeds, and no more.

How could equity, called upon to enforce such common trust, practically destroy the equal distributive rights of 2,906 bonds and unlawfully swell the aliquot shares of the favored remainder by distributing the entire proceeds allotted to the recorded mortgage lien among only 1,621 bonds?

If the lien section of the Code is applied to mortgages executed before its passage with any such interpretation or result, it would materially impair the obligation of such existing contracts, and to that extent be unconstitutional and void.

This proposition needs no elaboration. The effect of the Code of 1888 as thus expounded would operate directly and injuriously upon the covenants, liens and obligations of the prior mortgage of 1886, and materially injure the negotiability and value of all the bonds.

These rights, subsequent legislation cannot touch.

Knapp v. Railroad, 20 Wall., 117.

Fletcher v. R. & B. R. R., 39 Vt., 633.

Murray v. Gibson, 15 How., 421.

Carrol v. Carrol, 16 *ibid.*, 275.

On the constitutional test the anterior mortgage lien must remain inviolate, and the validity of the Code provision can only be upheld by restricting it rigidly to its precise terms and construe it as applicable, not to bond issues at all, but only to "mortgages executed" after its taking effect, and none others

Donalry v. Clapp, 12 Cush., 440.

Parker v. Mass. R. R., 115 Mass., 580.

McConneaughey v. Bogardus, 106 Ill., 321.

The consolidated mortgage of 1886 was to a large extent designed to be a refunding instrument, and not alone a means of borrowing fresh money (Record, 56). The consolidated bonds issued thereunder were to be mainly used to take up, refund and exchange the mortgagors' first-lien bonds and second-lien debenture bonds, and for acquisition of not to exceed \$15,000 per mile of first-mortgage bonds of other roads, to be deposited as part of the mortgage security and for new equipment not to exceed \$2,500 per mile of road.

In the first paragraph of the schedule of trusts (Record, 68) it is expressly provided that all bonds so exchanged or acquired shall be retained and held by the trustee without cancellation, and "without any release, relinquishment or impairment of the lien or security of the said several mortgage deeds of trust under which the exchanged bonds have been issued," etc.

The decree of foreclosure adjudges (Record, 269) that \$632,000 consolidated bonds were issued in exchange for debenture bonds; \$719,000 for debenture bond coupons and scrip; \$350,000 for new equipment; \$2,826,200 in exchange for \$2,844,000 first mortgage bonds of eleven different railroad companies recited in the decree and

constituting a part of the mortgage security represented by the sale proceeds in the registry.

Whatever the supply lien on the physical road, the \$2,906,000 bonds issued after May, 1888, could not be lawfully deprived by the rail creditor of this specially reserved lien of the \$1,451,100 deposited debenture bonds and the lien of the mortgage *of 1882* securing them, or of their lien upon the deposited \$2,844,000 first-mortgage bonds of other companies. Neither of these two classes of security constituted "property used in operating the railroad." Consequently, appellee had no possible statutory lien upon those parts of the security included in the consolidated mortgage. They were sold and contributed to the fund in court. Clearly the third paragraph of the decree that the debt of the appellee, "by reason of the "statutes of Virginia, is entitled to priority of payment "out of the fund resulting from the sale of the mortgaged property" over the \$2,906,000 bonds cannot be sustained either on the lien law or on any theory of equity.

SEVENTH. The severance of the mortgage debt adjudged by the decree under appeal is a collateral impeachment and unlawful annulment of material provisions in the final decree of foreclosure under which the proceeds of sale were brought into court, and impairs the rights of the purchaser.

The foreclosure decree was rendered April 13, 1894. It has never been amended. At the close of the term

when entered it passed beyond the power of the court. The appellee was a defendant in the cause. The recitals of the decree therefore bind and conclude it as to all matters adjudged. It decreed that such mortgage was issued to secure all bonds issued thereunder "*without preference or priority and equally and ratably*" (Record, 265); *that 4,527 consolidated bonds were outstanding in the hands of bona fide holders for value, and that all such bonds and coupons "are entitled to the security of said consolidated mortgage"* (Record, 273).

All consolidated bonds and coupons were decreed to be receivable in discharge of the bid without any discrimination or difference in value dependent on the varying dates of their original issue (Record, 279). The fund arising from the sale after payment of costs was ordered to be distributed first to "*the payment ratably of the interest due and unpaid upon the consolidated bonds and thereafter upon the principal of such bonds*" (Record, 281). The only liens which the court reserved the power to allow against the property or the purchaser assumed to pay, were those decided to be prior in lien or superior in equity to the mortgage foreclosed.

The Court is without power to vary or enlarge the obligation of the purchaser.

Davis v. Duncan, 19 Fed., 477.

C. & O. R. Ry. v. McCammon, 61 *ibid.*, 772.

These provisions of the final decree constitute a conclusive adjudication as to the unity of the entire mortgage debt, that each consolidated bond is of equal value and entitled to exactly the same distributive share of the

mortgage security and sale proceeds with every other bond of the issue.

Bound v. S. C. R. R., 71 Fed.; 53.

The sale proceeds were realized under the execution of this decree, which adjudged the inseparable unity of the mortgage debt and the equal ratable right of every bond of the issue to the same security and satisfaction.

The court has no judicial power after such decree, sale and conveyance, to subvert the underlying principle of the decree, and in an order upon an intervention, in effect reverse and re-decree the adjudged liens and priorities of the bondholders, and order that a certain portion are to be preferred in payment out of the sale proceeds and the remaining bonds are to be postponed to subsequent debts.

The proceeds must be distributed on the basis of the decree under which they arose.

The only reserved equity is to allow claims which outrank the mortgage considered as a unit. The Court retained no power to vacate or alter the adjudged equality of all the consolidated bonds upon the proceeds of sale or to make any allowance in preference to a part of the bonded debt.

The practical execution of the third paragraph of the decree of the intervenor would require the payment of interest in full on the \$1,621,000 preferred bonds, and then the full payment of all their principal, leaving the interest and principal of the \$2,906,000 postponed bonds to come against any surplus remaining after appellee's claim had been fully paid as a second lien.

This would annihilate the equal rights of distribution adjudged by the final sale decree to every bond of the class, and is obviously beyond the judicial power.

Upon the foregoing grounds the appellant prays reversal.

HENRY CRAWFORD,

WILLIS B. SMITH,

Solicitors.

E. J. PHELPS,

Of Counsel.

Office Supreme Court U. S.
FILED

NOV 7 1898

JAMES H. MCKENNEY,
Clerk.

1^o *Dr. J*

Sup. Ct. of Crawford & Smith

Opp.

Supreme Court of the United States.

Filed Nov. 7, 1898.

October Term, 1898.

**Certiorari to the Circuit Court of Appeals for the
Fourth Circuit.**

SOUTHERN RAILWAY COMPANY,

Appellant,

vs.

CARNEGIE STEEL COMPANY, LIMITED,

Appellee.

Supplemental Brief for Appellant.

HENRY CRAWFORD,

W. B. SMITH,

Solicitors.

E. J. PHELPS,

Of Counsel.

Supreme Court of the United States.

SOUTHERN RAILWAY COMPANY, Appellant,	}	No. 39.
VS.		
CARNEGIE STEEL COMPANY, LIMITED, Appellee.		

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR
THE FOURTH CIRCUIT.

Supplemental Brief for Appellant.

1. It was insisted at the bar, as well as in the appellee's brief, that the rail claim should in equity be charged against the sale proceeds because the order granted on June 28, 1892, directed the Receivers to apply incoming earnings to the payment of accruing rentals on leased roads and equipment.

Authorities were cited to support the proposition that claims of this sort are not entitled to priority in equity, and therefore constitute diversion.

The decisions invoked do not to any degree whatever sustain the contention of the unsecured creditor.

In *Quincy Co. vs. Humphreys*, 145 U. S., 82, it was held that the mere appointment of Receivers for a railroad system and the temporary user of a leased

line by the Court's officers did not constitute them assignees of the term and charge the rental upon the foreclosing mortgagee.

Kneeland vs. Loan and Trust Co., 136 U. S., 89, and Thomas vs. West. Car Co., 149 U. S., 95, decided that the rental of cars accrued before a receivership was an ordinary unsecured debt not entitled to preference in payment out of the income of a receivership.

The appellees' debt rested upon the personal credit of the railroad company. By the six months' limitation of the original order, it had no claim whatever to be paid out of the Court's income. The car and road rentals ordered to be paid were not corporate debts accrued before suit, but the reasonable current expenses of the receivership necessarily incurred in the management of the property taken into judicial custody and of course to be paid as primary operating debts of the Court itself.

It is not necessary to cite the repeated decisions of this Court which enforce this principle.

The order of June 28, 1892, in respect of the direction to pay accruing car trusts and rentals was a mere reaffirmance of like terms in the original order of appointment and did not constitute any original or variant appropriation of receivership income.

The Court reserved the power to modify or set aside this order upon the application of any party in interest. If in law the appellee was entitled to be paid out of such income it should have asked to be relieved against the inequitable diversion. It is concluded by its acquiescence.

The charge is made that "the trustee for the bond-
" holders joined in procuring this order directing the
" Receivers to divert the earnings generally from their

"natural use in paying the current expenses of the company," &c.

The only warrant for this statement is that the trustee, although not a party to the suit, was served with a notice of the application for the issue of Receiver's certificates which would postpone its mortgage liens.

The consolidated bonds subsequently foreclosed had no possible claim upon the current income of the first receivership or any color of right to object to the use thereof for the payment of car trusts or rentals due for the use of property by the Court.

Their interest had been paid and there was no existing breach of condition of their mortgage to give them any right to share in the current earnings or to dictate how they should be applied by the Court.

The fact that the consolidated bondholders did not actively resist an order applying income upon which they had no claim does not create an equity for an unsecured creditor, to be first paid out of the mortgage security.

The charge is many times repeated that the car and rental payments were made "merely for the purpose of keeping the property together for the benefit of the bondholders."

The record furnishes no justification for this assertion.

It shows the system was not kept together. Prior to the foreclosure decree many leased or operated divisions were dropped.

Out of the twenty-six railways constituting the system taken into custody under the Clyde bill, the consolidated mortgage was only a lien on nine leasehold estates (Record, 65-67, 266-268).

Of these the leases of the Columbia and Greenville,

Charlotte, Columbia and Augusta, and York River roads were not assumed by the purchasers (Record, 291).

The table C (Record, 432) shows that the Clyde Receivers were operating and paying rentals upon 25 leased lines.

Exhibit B (Record, 431) shows that the foreclosure receivers only operated the few roads specifically covered by the consolidated mortgage and in fact only paid contract rental upon five lines.

Of these the North Carolina, Virginia Midland and Atlanta and Charlotte Air Line were indispensable to to any profitable working of the Richmond and Danville Railroad.

Deprived of their control the main stem would have been reduced to a mere local and non-remunerative road between Richmond and Danville.

Under the circumstances disclosed by the record the rail creditor had no equity whatever to demand that its claim should be paid to the exclusion of the rental of lines essential to the production of any net revenue, or that the mortgagee's estate, having been already subjected to \$1,000,000 liability for preference claims, should be required to pay another large sum for rails sold the company on long credit because the Court paid out income to which the mortgagee had no claim upon road rentals and car trusts instead of unsecured debts.

2. It is urged that the consolidated bondholders are chargeable with what was done in the way of paying out earnings in the Clyde suit because such receivership was made permanent on the motion of their trustee.

The record clearly establishes the incorrectness of this statement.

On the hearing whether the temporary receivership should be made permanent many of the mortgage trustees did, in express terms, petition "that the Court should continue its judicial possession and appoint permanent receivers."

The only motion or request of the Central Trust Company is :

"The undersigned, as representing the several liens on the property, designated hereunder, *if the Court should determine to continue its present judicial possession of the system*, hereby respectfully petitions it to appoint Frederic W. Huidekoper and Reuben Foster as permanent receivers of the Richmond and Danville Railroad Company " (Record, 167).

We also correct the erroneous statement that the Central Trust Company, as trustee for the foreclosing bondholders was, on its own application, made a party to the insolvency suit on August 16, 1892.

As shown by its proof of claims and schedule attached (Record, 183-185), the Central Trust Company was trustee in a large number of liens besides the consolidated mortgage of October 22, 1886.

Its only petition to be made a party to the Clyde suit was filed July 13, 1892 (Record, 138-141).

At such date there was no default on the consolidated mortgage of 1886.

The petition, after reciting the institution of the Clyde suit and the appointment of Receivers therein, alleged that it was the trustee in the first mortgage of 1874 executed by the railroad company and that there was a default, on July 1, 1892, in the payment of interest due on that lien; that it was also

trustee in what was called the emergency loan of March 29, 1892, whereby the earnings of the system were pledged, and that there was an existing default on that incumbrance.

No mention is made of the consolidated mortgage.

The eighth paragraph of its petition is as follows :

“ Your petitioner further alleges that, for the protection of the *interests represented by it as aforesaid*, it is necessary that your petitioner should be allowed to intervene in this suit and have notice and an opportunity to be heard therein *for the protection of all the holders of the said six per cent. bonds of the Danville Company and of the subscribers to said emergency loan,*” &c.

The record conclusively establishes :

1. The trustee of the consolidated mortgage was never made a party to the first receivership suit.

2. It did not apply to make such receivership permanent.

3. It never applied for or obtained any order in the cause either as to the disposition of net earnings or otherwise.

4. It never was even notified of any application therein except for the order to postpone its mortgage to \$1,000,000 Receiver's certificates.

5. When such order was obtained its mortgage was not in default and it never at any time asserted any claim upon the net income in that suit either for the direct or indirect benefit of the consolidated bondholders.

6. Instead of the first receivership resulting in benefit to the consolidated bondholders, it yielded them no interest and subjected them to a prior lien of \$1,000,000 Receiver's certificates, and the burden of \$480,000 arrears of interest on the senior mortgages.

There is nothing in the record which in any degree justifies the assumption that the first receivership was either obtained or conducted by or for the benefit of the consolidated bondholders.

7. A ruling of the late Mr. Justice JACKSON was cited in the oral argument to sustain the proposition that the cost of 4,000 tons of heavy steel rails to replace lighter ones was a betterment and not an ordinary operating-expense charge against current income.

The case is *Mackintosh vs. F. & P. M. R. R. Co.*, 34 Fed., 582.

His decision on the point was :

" The practice of the management was to remove
 " the old iron rails from the main track and use these in
 " laying sidings, as required, and to put new steel rails in
 " the main track in place of old iron rails taken up. The
 " difference between the cost of the new steel rail laid
 " down on the main line, and as laid down, and the
 " value of the old iron rail taken up, was charged to
 " operating expenses, under the head of repairs to
 " roadway, or ' track repairs.' Thus, in the report for
 " 1881, it is stated that 4,000 tons of steel rails were
 " laid down on the road. The cost of this, less the
 " value of the old rails removed, was fixed at \$133,-
 " 779.09, which was charged to operating expenses as
 " ' track repairs.' * * *

" The ' repairs,' which Article 4 of the charter pro-
 " vided should be paid out of net income, did not, as

“ between the preferred and unpreferred, or provisional stockholders, warrant this method of dealing with the earnings of the company. It was neither just nor fair toward the latter class. Its effect was, not to keep the track in repair—in the same state of efficiency as it existed on October 1, 1880—but to improve and enhance its value at the expense of earnings, which are thus reduced, and the provisional stockholders correspondingly postponed in coming into the company. If necessary to the assertion of complainants’ rights, this Court would order the whole steel-rail account to be charged to construction, and earnings credited back with all that has been expended therefrom for or on account of steel rails and steel improvements.”

This Court in *Grant vs. H. & N. H. R. R.*, 93 U. S., 227, defined what repairs were payable as current expenses as those “ required to keep the property up to its usual condition for operation.”

“ If a railroad company should make a second track when they had but a single track before, this would be a betterment or permanent improvement, and if paid out of the earnings would be fairly characterized as profits used in construction.”

“ The works of the company would have an additional value to what they had before, with an increased capacity for producing future profits.”

8. The fourth point of appellee’s brief which was most earnestly pressed in argument is that the decree awarding it a special priority of payment should be affirmed because by the operation of a proposed reorganization plan, the Richmond and Danville stockholders were preferred to creditors.

1. No such contention is presented by the record.

The only mention made by appellee of such proposed reorganization is in its application of March 1, 1894, to be made a defendant to the foreclosure case (Record, 365).

It made a printed copy of such "proposed scheme" an exhibit.

The response of the trustee of the consolidated mortgage did not admit any of the averments as to the existence, terms or purposes of such proposed plan.

On the contrary it submitted that all such averments were irrelevant and should be stricken out; that the Court must necessarily adjudge the respective liens and priorities of the foreclosing mortgagee and the rail creditor without reference to any plans which intending purchasers might have, and that in the absence of the reorganization committee the Court was without jurisdiction to render any decree as to the validity of such scheme, or control the distribution of the securities to be issued thereunder (Record, 377).

On the reference to the Masters, the appellee introduced no evidence whatever in support of those allegations in its petition.

Of necessity the Masters made no report on a contention that was practically abandoned or allegations unsupported by any testimony.

In the Circuit Court the appellee filed no exception because the Masters failed to report on its averments as to the reorganization plan.

It was content with the decree rendered by the Circuit Court awarding it a special priority over the mortgage bonds both as a statutory and equitable lien.

In the Circuit Court of Appeals it assigned no cross-error because the Circuit Court had failed to decree

that the reorganization scheme was fraudulent as to unsecured creditors.

It is quite clear, therefore, that if the appellee fails to establish the special priority over the mortgage decreed to it in terms as a supply creditor, irrespective of any plan of purchase, it is not entitled upon this record to claim an affirmance upon the inconsistent theory that by a proposed plan of reorganization, in respect to which no testimony was offered, the purchasers under the decree would acquire the property, or some interest therein, subject to a constructive trust for the benefit of all unsecured creditors.

2. As the reorganization committee were not made parties to the appellee's intervention, the Court was without jurisdiction to render any decree impeaching the validity of the proposed plan of purchase or assuming to direct them in the distribution of the new securities to be issued on the basis of the purchase under the foreclosure decree.

3. The jurisdiction of the Court in a foreclosure suit is restricted to a foreclosure, sale and conveyance of the mortgagor's equity of redemption, the delivery of possession and distribution of the accepted bid.

The equities of general creditors as against shareholders cannot be therein considered or decreed.

The purchaser becomes a *quasi* party only for the purpose of enforcing compliance with his contract with the Court consummated by the acceptance of his bid.

The Court, in a foreclosure suit, is without judicial power to entertain or decide the moot court contention that some intended future purchase under its decree will, if effected, be fraudulent as against the general creditors of the mortgagor.

That issue can only be tried by an original bill filed after the alleged fraudulent purchase has been actually consummated.

The existence of a proposed plan of reorganization cannot enlarge the judicial power or alter the established principles and practice in foreclosure cases.

The scope of the jurisdiction is restricted to enforcing the mortgage and distributing the proceeds of the confirmed bid according to the terms and priorities of the trust deed.

The terms of a possible future purchase cannot be prematurely invoked to control the provisions of the decree of sale.

The priorities and distribution must be adjudged in every respect as though no plan of purchase or reorganization existed.

4. It is claimed that *Railroad Company vs. Howard*, 7 Wall., 392, is precisely parallel and is decisive upon the point now under consideration.

Upon analysis it will be seen that the controlling facts in the case cited are radically variant from those presented by this record.

In the *Howard* case, after a completed sale under a foreclosure decree, a judgment creditor of the mortgagor corporation filed a bill to reach that portion of the cash proceeds of sale which was payable under contract directly to stockholders.

Here an unsecured creditor in the foreclosure suit itself, in advance of decree, seeks by intervention to raise an issue as to the validity of a future purchase which possibly may never be consummated.

In the *Howard* case, the bill sought a ratable application of the fund among all unsecured creditors.

Here, the appellee failing in his efforts to establish his priority as a supply creditor, asks a court of equity to give it full satisfaction out of an alleged fund to which all other unpaid creditors of the Richmond and Danville Railroad are equally entitled to share.

In the Howard case there was no attempt made to displace the priority of the mortgage bondholders, or to apply any portion of the fund going to them under the purchase to the payment of unsecured debts.

The only fund there sought to be reached was that portion of the sale proceeds which was payable directly to stockholders.

Here appellee seeks the affirmance of a decree which gives its claim a priority and right of payment out of the sale proceeds over all foreclosing bonds.

In the Howard case the stockholders paid no assessment, and directly out of the sale proceeds were to receive \$552,400 in cash.

Here the stockholders of the mortgagor *solely as such* received neither cash or new securities after reorganization.

The only stockholders sharing in the reorganization were those of the Terminal Company. Their corporation, besides owning the stock of the Richmond and Danville Railroad Company, was a creditor of that company to over \$2,000,000, and also owned many millions of bonds secured by mortgage on different portions of the railroad system (Record, 522-524).

The Terminal stockholders were required as a condition of participating in the benefits of the reorganization to pay \$7,000,000 (Record, 524).

The share allotted to Terminal stockholders in the reorganization was not given either wholly or to any material degree upon the fact that they were in-

terested in the stock of the mortgagor, but mainly because it was the largest creditor and the owner of many millions of mortgage bonds on lines embraced in the reorganization and because they contributed \$7,000,000 new capital.

The Terminal stockholders under the plan did not receive either money or bonds.

They were only allotted certain percentages in the preferred and common stock of the new corporation organized to take title to the system after the reorganization (Record, 52).

In the Howard case the money fund sought to be reached belonged to the mortgagor corporation because the mortgagee and bondholders had in express terms released and discharged their lien upon that portion of the sale proceeds.

This Court thus stated the controlling feature of that litigation.

" Subject to their lien the property of the railroad
 " was in the mortgagors, and whatever interest re-
 " mained after the lien of the mortgages was discharged
 " belonged to the corporation, and as the property of
 " the corporation when the bonds were discharged it
 " became a fund in trust for the benefit of their cred-
 " itors."

Here there can be no possible claim that under the reorganization plan the consolidated mortgage lien was to any extent discharged or any stockholding interest allowed to participate with the foreclosing bondholders on equal terms. The scheme expressly provides :

" Neither the committee, the bondholders, the
 " creditors or the parties interested in the Terminal
 " Company, nor those interested in any subordinate
 " company, by executing this agreement or by becom-

“ing parties hereto, or by reason of any decree of
 “foreclosure or other decree that may be rendered or
 “any purchase thereunder, waive or surrender any
 “legal right or lien in favor of the stockholders or
 “creditors, secured or unsecured, of the said Terminal
 “Company or of any subordinate company.

“Any purchase or purchases by or on behalf of the
 “committee under any decree shall be for the sole and
 “exclusive benefit of the mortgage, lien, or other
 “creditors for whose benefit such decree may be ren-
 “dered to the extent of their legal interest therein, to
 “the end that the new company shall acquire under
 “such decree or decrees, and the purchasers thereunder
 “the titles to the property so purchased, free from all
 “claims of stockholders and other creditors, as against
 “which such mortgage or lien creditors reserve all
 “legal rights ” (Record, p. 561.)

The proposed distribution of new securities (Record, 527) shows that the consol bondholders received par in new Company bonds and five per cent. in its preferred stock.

Their original priority for their whole debt was thereby continued under the new organization, for the Terminal stockholders only received preferred and common stock, notwithstanding their contribution to the reorganization of new cash, debts and mortgage bonds.

In this respect the scheme assailed is substantially similar to the reorganization expressly approved by this Court in *Sage vs. Central R. R.*, 99 U. S., 334, when the priority of the foreclosing bondholders' debt was fully preserved in the frame of the new company and “entirely subordinate interests are

"conceded to junior lien creditors and to the stockholders of the former corporation."

If the appellee has any equity, because of the Richmond Terminal reorganization plan, it can only be asserted by an original bill in behalf of all general creditors of the Richmond and Danville Company, and it cannot on any theory outrank or displace the consolidated mortgage or reach any fund except such subordinate interests in the new company as were distributable to Terminal stockholders.

November, 1898.

HENRY CRAWFORD,

W. B. SMITH,

Solicitors.

E. J. PHELPS,

Of Counsel.

ct: 676. 248. 30 P.

Brief of Knox, Willcox & Bond

IN THE

Appellee.

Supreme Court of the United States
Filed Dec. 28, 1896.

No. 676

OCTOBER TERM

U. S. Supreme Court

FILED

DEC 28 1896

THE SOUTHERN RAILWAY COMPANY,

JAMES H. McCAHNEY
Petitioner,

vs.

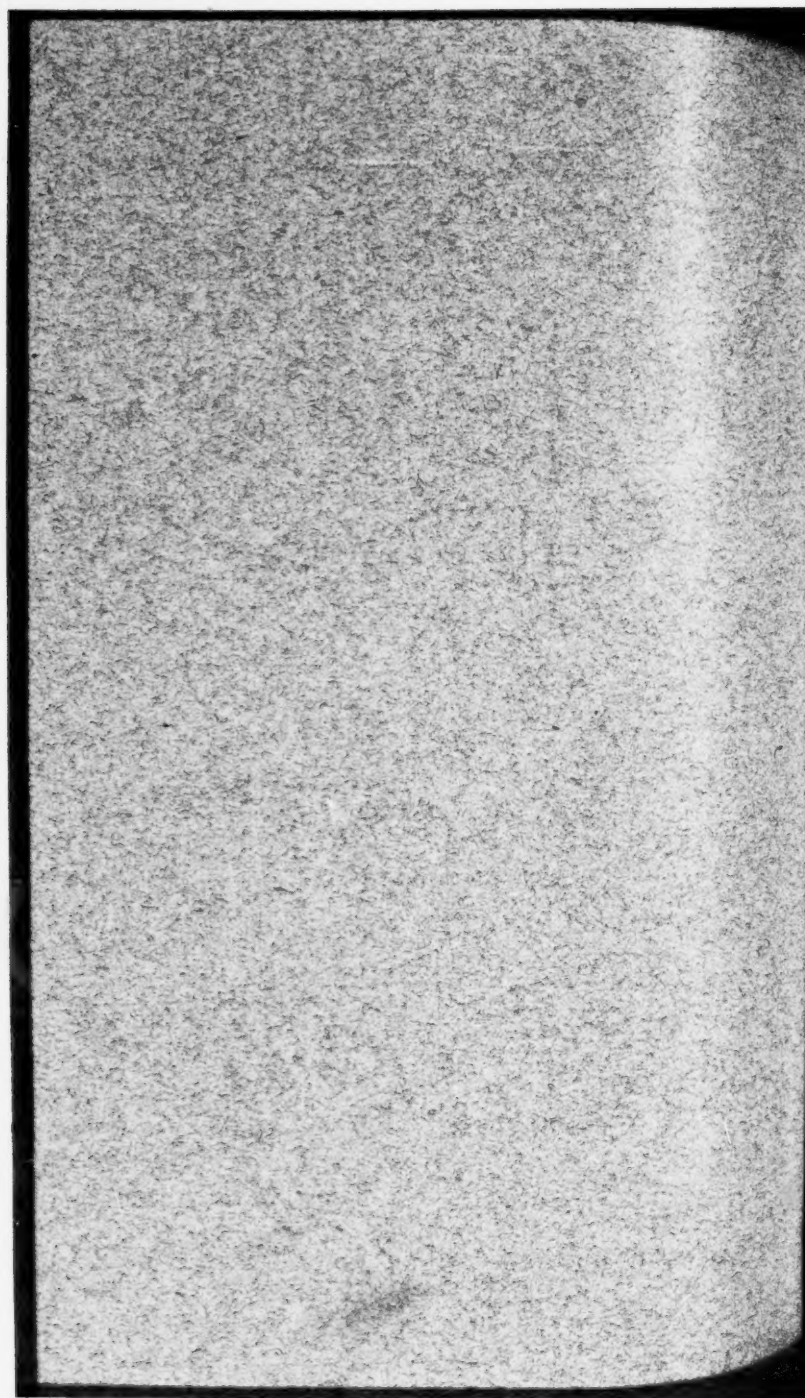
THE CARNEGIE STEEL COMPANY,

Respondent.

Brief in Opposition to Petition for Certiorari.

P. C. KNOX,
DAVID WILCOX,
NICHOLAS P. BOND,

Solicitors for Respondent.



IN THE
Supreme Court of the United States

No. 674.

OCTOBER TERM, 1896.

THE SOUTHERN RAILWAY COMPANY,
Petitioner,

vs.

THE CARNEGIE STEEL COMPANY, LIMITED,
Respondent.

BRIEF

**In Opposition to Petition of Appellant for a Writ of
Certiorari to the Circuit Court of Appeals
for the Fourth Circuit.**

It is the settled rule of this Court that this branch of its jurisdiction (26 Statutes at Large, chap. 517, sec. 6, page 828,) "should be exercised sparingly and with great caution and only in cases of peculiar gravity and general importance in order to secure uniformity of decision." (*American Constructions Co. vs. Jacksonville Railway Co.*, 148 U. S., 372; *In re Woods*, 143 U. S., 202; *Lau Ow Bew's Case*, 141 U. S., 583, and 144 U. S., 47.)

Under provisions of the same character the Court of Appeals of New York has just held that the power to grant a

certificate is intended primarily to provide for exceptional cases, where public interests or the interest of jurisprudence might be endangered by permitting a decision to go unchallenged, and the mere existence of errors prejudicial to the particular parties does not of itself warrant the allowance of an appeal. (*Sciolina vs. Erie Preserving Co.*, 151 N. Y., 50.)

In pursuance of these principles this Court will not, in passing upon such a petition, inquire whether or not the Court below erred in its findings as to the facts, but will inquire whether or not the law declared upon the facts as found is so important in its immediate effects or so far reaching in its general consequences as to make the case exceptional in its character and to warrant the Court in granting the writ. Necessarily the writ will not be granted upon the allegation of errors prejudicial merely to the petitioner. If that should be recognized as sufficient ground, an application would naturally be presented whenever a litigant deemed himself aggrieved.

The brief in behalf of the petitioner refers to the case of *Clarke vs. Central Railroad and Banking Company*, No. 404 of the present term, as supporting the present application. But it has no such effect. That case involved the question whether where a railroad was operated under lease and the lessee had incurred liabilities for supplies, claims therefor remaining unpaid, could be charged upon the property of the lessor. It will be seen that this was a novel question and has no possible connection with that now involved.

The present case presents no new question of law ; no new application of an old principle of law and no new principle of law. It establishes no rules of law of interest to others than the parties litigant. The question litigated below has been in reality whether or not facts existed such as to bring the respondent's claim within well established rules of law.

The facts found by the Court are as follows :

First. The original bill (the Clyde bill) was not a mortgagee's bill for the collection of a mortgage debt, but a

stockholder's and creditor's bill, filed with the assent of the corporation to preserve the system pending a reorganization.

Second. The mortgage trustee, though not a party to the bill originally, upon its own motion, became a party to this case shortly after the bill was filed, and united in the application for the appointment of permanent receivers.

Third. The foreclosure bill subsequently filed and consolidated with the Clyde bill was a part of the programme of which the Clyde bill was the initial performance, to wit, the reorganization of the property, not the collection of the debt.

Fourth. That the respondent, about one year prior to the appointment of receivers of the Richmond and Danville Railroad Company, contracted to sell to that company certain steel rails, to be delivered thereafter, for which the railroad company was to give to the respondent its notes payable at various dates.

Fifth. That the rails were delivered at sundry times, the last of them on October 10, 1891, and the notes of the railroad company given therefor, which notes, however, did not finally mature until after the appointment of the receivers.

Sixth. That the receivers earned large amounts over operating expenses, out of which they expended about half a million dollars for new construction and equipment on the mortgaged property, thereby increasing to that extent the mortgaged security, and otherwise applied the net income in their hands for the direct benefit of the mortgaged premises, leaving the debt due this respondent unpaid.

To this state of facts the Court below applied the decision of this Court in *Burnham vs. Bowen*, 111 U. S. 776, and we may state its decision in the very words used by this Court in that case, viz :

(1.) "At the time of the appointment of the receivers, this was one of the current debts for operating expenses made in the ordinary course of a con-

tinuing business, to be paid out of the current earnings, which would have been paid if the company had continued in possession," and that it made no difference that the debt was represented by notes, "with a somewhat extended credit to meet the business requirements of what may have been, and probably was, at the time, an embarrassed railroad company." (Burnham vs. Bowen, 111 U. S. 778.)

(2.) "When a Court of Chancery takes possession of a mortgaged railroad, and thus deprives the company of the power of receiving any further earnings, it ought to do what the company would have been bound to do if it had remained in possession, that is to say, pay out of what it received from earnings, all the debts which in equity and good conscience, considering the character of the business, are chargeable upon such earnings. In other words, what may properly be termed the debts of the income, should be paid from the income before it is applied in any way to the use of the mortgagees." (Burnham vs. Bowen, 111 U. S. 780.)

(3.) "When, therefore, the Court took the earnings of the receivership and applied them to the payment of the fixed charges on the railroad structures, thus increasing the security of the bondholders, at the expense of the labor and supply creditors, there was such a diversion of what is denominated in Fosdick vs. Schall, the 'current debt fund,' as to make it proper to require the mortgagees to pay it back." (Burnham vs. Bowen, 111 U. S. 782.)

The law laid down by the Circuit Court of Appeals, may be stated, therefore, in the precise language used by this Court in the case of Burnham vs. Bowen. This sufficiently indicates that no question so new in its character, or important in its nature is presented, as to justify this application.

The decree of the Court below was inevitable upon the facts as that Court found them to exist. Those facts, as they appear in the opinions filed, are relied upon here to distinguish the case from the petitioner's conception of it, and are set forth in this brief only to the extent necessary to illustrate some of the most striking points of difference.

The whole contention of the petitioner to bring the case within the class of cases in which the Court will act, is predicated upon its statement, that the bondholders, recorded lien is impaired, and a general creditor paid out of the corpus of the property to their detriment. This is not the case. The whole scope of the decision is to the effect that the Court having seen fit, for the purpose of enabling the railroad to perform its public duties, to take money which should have been applied to paying this supply creditor, and use it in new construction and new equipment, thereby increasing to that extent the mortgagee's security, now requires that mortgagee to return the money so diverted and used for its benefit, so far as is necessary to pay off this supply creditor.

The brief for the petitioner cites a number of authorities decided since that time. Upon examination, it will be found that they do not modify the rules stated in *Burnham vs. Bowen* as applying to the present state of facts. The present claim rests upon the fact that during the receivership the property has made large net earnings, and the same have been diverted from the payment of current debt claims to the payment of interest or to the permanent improvement of the property. These facts distinguish the case precisely from the case of *Kneeland vs. American Loan and Trust Company*, 136 U. S., upon which the petitioner so much relies, for the Court there remarks :

“ It is important to note these facts :

“ First. This case is not embarrassed by any matter of surplus earnings, for it appears beyond any possibility of doubt that from the time of the purchase of this rolling stock to the time of the final disposition of these cases, the receipts did not equal the operating expenses. There was no diversion of the current earnings either to the payment of interest or to the improvement of the property.” (Page 96.)

The same observations apply to *Thomas vs. Western Car Company*, 149 U. S. 95. Neither of these cases had nothing to do with the question of diversion of income earned by the property or in the hands of a receiver, but they both

involved the question whether current debt claims should displace vested liens of mortgagees. So too, in the case of *Bound vs. South Carolina Railway Co.*, 58 Fed. Rep., 473, which the brief in behalf of the petitioner, (page 10,) erroneously states was disregarded *sub silantio* by the Court below. It will be found in both the opinions rendered in the case at bar, it is pointed out that the *Bound* case decides merely that one accepting a note could not object to an application of earnings during the term of credit to the payment of debts other than his own; that there was no proof of earnings by the receiver diverted from supply creditors, and that the effort was to obtain a priority over the mortgage and be paid out of the proceeds of sale of the corpus of the railroad.

These considerations sufficiently answer the third, fourth, fifth and seventh sub-divisions of the brief in behalf of the petitioner. So far as concerns the first, second and sixth sub-divisions of the same, it will be noticed that they are inconsistent and are mere efforts toward a strained construction of the Virginia lien statute, which are not supported by authority and have no present importance inasmuch as the decree found in behalf of the respondent generally.

The eighth sub-division of the petitioner's brief, claims that the allowance of interest was improper. In support of this contention, the brief cites, *Thomas vs. Western Car Company*, 149 U. S. 95, 116. It will be seen that this case has no application to the present one. The question there was not regarding the diversion of the earnings of the property, but whether interest should be allowed out of the corpus of the mortgaged premises. The Court held that under the circumstances of the case it should not, inasmuch as those proceeds were far short of sufficient to pay the mortgage debt. It stated that it was a rule that after property of an insolvent passes into the hands of a receiver or of an assignee in bankruptcy, interest is not allowed on the claims against the funds. This, of course, has application merely to the distribution of a fund among creditors of

equal rank and equally entitled to a share therein, and perhaps applies in its full extent only where this fund is insufficient to pay such claims in full, with interest. If the fund is sufficient to pay interest, the creditors are entitled thereto, and any creditor having a superior equity is entitled to interest prior to any payment to the parties next in rank, (*National Bank of the Commonwealth vs. Bank*, 94 U. S. 437, 441; *Richmond vs. Irons*, 121 U. S. 27, 66.) In *New England Railway Company vs. Carnegie Steel Company*, 75 Fed. Rep. 54, the Court said that if the petitioner had shown that there was a fund in the hands of the receivers or their privies especially applicable to the payment of this claim, which would not have been exhausted by the allowance of interest, the interest might perhaps have been computed. This is precisely what the Court below in the present case has held to be the fact. The allowance of interest is in large measure discretionary. The result reached in that regard can have no importance save only to the immediate parties to the litigation.

It is submitted that this Court will not grant a writ of certiorari merely for the purpose of inquiring into the existence of the facts and the propriety of the exercise of its discretion, in this particular made by the Court below.

It is further submitted that the real objection made by the petitioner is to the finding of the Court below that the receivers had as a matter of fact used net earnings in their hands for the benefit of the mortgagee.

This is a question of fact, not of law, and this Court will not issue a writ of certiorari for the purpose of inquiring into the correctness of the decision on this point.

P. C. KNOX,
DAVID WILLCOX,
NICHOLAS P. BOND,

Solicitors.

N^o. 228.

FILED

11

JAN 11 1899

Brief of Knox & Willcox for App.
Supreme Court of the United States.

Filed Oct. 11, 1898.

October Term, 1898.—No. 39.

**Certiorari to the Circuit Court of Appeals for the
Fourth Circuit.**

THE SOUTHERN RAILWAY COMPANY,

Appellant,

against

THE CARNEGIE STEEL COMPANY,
LIMITED,

Appellee.

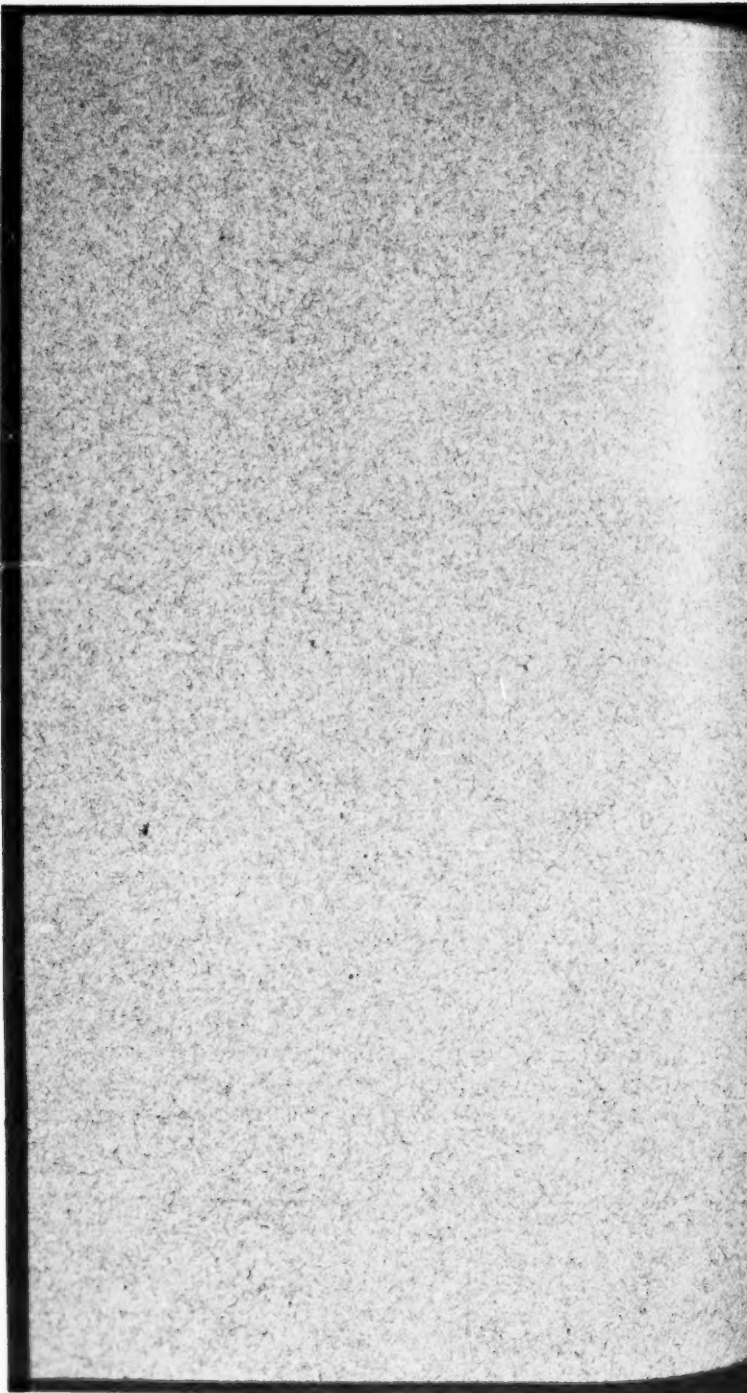
OCTOBER, 1898.

BRIEF FOR APPELLEE.

P. C. KNOX,

DAVID WILLCOX,

Of Counsel for Appellee.



Supreme Court of the United States.

OCTOBER TERM, 1898. No. 39.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH
CIRCUIT.

THE SOUTHERN RAILWAY COMPANY,
Appellant,

AGAINST

THE CARNEGIE STEEL COMPANY, LIMITED,
Appellee.

October, 1898.

BRIEF, for Appellee.

The Richmond and Danville Railroad Company, hereinafter called the Railroad Company, at the times involved, was a corporation of Virginia, with power to construct and operate a main line between Richmond and Danville and also to acquire the control of other railroad and transportation lines, in Virginia and elsewhere, by purchase or lease of such properties, and to own the stocks and bonds thereof and guarantee the same, and operate and manage all such other lines of railway and enjoy the income thereof. It had acquired the possession and control of twenty-six other railways (p. 2) situated in Virginia, North Carolina, South Carolina, Georgia, Alabama and Mississippi, which were operated as a single system without separation of earnings and expenses (p. 3). The total mileage of these roads was three thousand three hundred and twenty miles (pp. 3, 4, 155).

Under date of October 22, 1886, the Railroad Company executed

Statement.

to the Central Trust Company a mortgage known as its Consolidated Mortgage covering its own line and its most important leaseholds (pp. 56-75). The stock of the Railroad Company amounting to \$5,000,000 was owned almost entirely by the Richmond and West Point Terminal Railway and Warehouse Company (p. 2), hereinafter called the Terminal Company.

Upon June 10, 1891, a contract was made by Carnegie Bros. & Co., Limited, a limited partnership under the laws of Pennsylvania, the name of which has since been changed to the Carnegie Steel Co., Limited, with the said Richmond and Danville Railroad Company (pp. 365, 370).

This provided that the Carnegie Company should deliver to the Railroad Company 2500 tons of steel rails during July, 1891, for which that Company was to pay thirty dollars per ton (p. 371); payment was to be made in the notes of the Railroad Company at four months without interest, with the privilege of one renewal for three months at five per cent interest and a second renewal for three months at six per cent interest (p. 371); the Railroad Company had the option of increasing the quantity by 200 or 300 tons, and the Carnegie Company guaranteed the rails for five years (p. 372). This option to increase the quantity was duly exercised, and by arrangement between the parties made upon July 21, 1891, the contract was further extended to cover 1,656 tons of rails, and by similar arrangement made upon October 2, 1891, it was further extended to cover 200 tons of second quality rails at the price of twenty-six dollars per ton (p. 372).

Pursuant to said contract and arrangements, the Carnegie Company delivered to the Railroad Company, between July 25, and October 10, 1891, $4,263\frac{350}{2240}$ tons of rails, the aggregate price of which was \$125,067.39 (pp. 374, 481-484). The Railroad Company gave its notes therefor, which it renewed as contemplated in the contract. The last notes so given, which are still unpaid, were as follows (pp. 372-374):

Note for \$38,251.77, dated March 21, 1892, due June 21-24, 1892.

Note for \$35,499.38, dated March 24, 1892, due June 24-27, 1892.

Note for \$12,786.16, dated April 4, 1892, due July 4-7, 1892.

Note for \$5,355.09, dated May 16, 1892, due August 16-19, 1892.

Note for \$33,174.99, dated June 7, 1892, due October 7-10, 1892.

Statement.

On June 15, 1892, William P. Clyde and two others, who alleged that they were creditors and stockholders of the Railroad Company, filed a bill against that company and the Terminal Company in the Circuit Court of the United States for the Eastern District of Virginia (p. 14).

This alleged that the character of the Railroad Company was as above stated; that it was insolvent; that "an eminent banking firm of New York City" was investigating its affairs with the view of preparing a plan of reorganization but had reached no conclusion, and any reorganization would require considerable time (pp. 14, 15); "that the unity of the property, as now held and operated as an important trunk line, constitutes one of the most important ingredients of its value, and that to permit its severance will result in a ruinous sacrifice to every interest in the property; * * that, unless the court, in view of the impending and inevitable defaults" (set forth in the bill), "will deal with the property as a single trust fund and take it into judicial custody for the protection of every interest therein that, immediately upon default, individual creditors will assert their remedies in different courts in the several states; a race of diligence will result; judgments and priorities will be attempted, * * and a most important and valuable trust property will be dismembered by the clashing decrees of the many courts exercising jurisdiction at the suit of separate creditors, which might be shielded and preserved as a valuable single trust property by adequate judicial protection until such time as a satisfactory financial reorganization could be perfected" (p. 16). The bill prayed, therefore, among other things, that the court "marshall all the assets, and ascertain the several and respective liens and priorities existing upon each and every part of all the said system of railways, and the amount due upon each and every of such mortgages or other liens, and enforce and decree the rights, liens and equities of each and all of the stockholders and creditors of said Richmond and Danville Company, * * as the same may be finally ascertained and decreed by the court upon the respective interventions or applications of each and every of such creditors or lienors;" and that the court forthwith appoint one or more receivers of all the property of the Railroad Company (p. 18).

No default, then, had at that time, been made in the payment

Statement.

of interest or rentals (pp. 400, 401), but the bill was filed by certain stockholders and creditors to hinder the creditors generally from enforcing their rights and thus to hold the property together for purposes of reorganization (Sage vs. Memphis Co., 125 U. S., 361; Brown vs. Lake Superior Co., 134 U. S., 530; Leadville Co. vs. McCreery, 141 U. S., 475).

Upon the same day, June 15, 1892, an order was accordingly made by said court appointing Frederic W. Huidekoper and Reuben Foster as receivers of all the property of the Railroad Company (p. 20); the receivers were directed to discharge all current and unpaid payrolls, vouchers and supply accounts incurred within six months prior thereto, and the cause was set down for hearing upon August 16, 1892, upon a motion to appoint permanent receivers (p. 22). On June 16 and 17, 1892, orders appointing the same receivers were made in the other districts in which the road was situated (pp. 23, 155).

Upon June 28, 1892, the complainants petitioned the court for an order that the receivers issue certificates to the amount of \$1,000,000, to take up preferential claims, so as, among other things, "*to preserve and increase the present market value of the bonds and stocks belonging to the receivership*" (p. 20), and that "the receivers be authorized to pay the instalments of rent and coupons of mortgage bonds resting upon the several parts of the system, so as to protect and preserve the present unity of the system of roads in their charge" (pp. 25-27). Attached to this petition were copies of the mortgages upon the property of the Railroad Company, which were in all cases to the Central Trust Company as trustees (pp. 28-133), and secured issues of bonds to the following amounts (p. 27):

First Mortgage dated October 5, 1874	\$5,997,000
Debenture Mortgage dated February 1, 1882	3,368,000
Consolidated Mortgage dated October 22, 1886	4,498,000
Five per cent Equipment Mortgage dated September 3, 1889	1,390,000
Six per cent Equipment Mortgage dated May 1, 1891....	883,000

Upon the same day, namely, June 28, 1892, *after hearing counsel for complainants, for the Central Trust Company and for the receivers, and on proof of the service of notice of motion upon both of the defendants, the receivers were* accordingly authorized to issue

Statement.

certificates to the amount of \$1,000,000, which were made a prior lien upon the property and its income (p. 135) and were directed to be used in payment of the preferential debt (pp. 136, 137), and the receivers were ordered also, at their discretion, out of the income coming into their hands from operation of the roads, to pay accumulating instalments on car trust accounts and all maturing rental obligations of the Railroad Company (p. 137).

On July 13, 1892, the Central Trust Company filed its intervening petition in said action, praying to be made a party (pp. 138-141). This petition was granted by order entered August 16, 1892, and the Central Trust Company was made a party "on the condition that it submits to the several orders heretofore entered herein" (p. 167). Thereafter the Trust Company had notice of all orders in the cause and in all cases consented thereto.

"The Principal Brief for Appellant states (p. 18) that "after the default in interest on (the consolidated) bonds "on October 1, 1892, this class of mortgage creditors did "not personally or by representation apply in or become "parties in the Clyde suit." This was because, as just shown, their trustee had become a party therein long before, namely, on July 13, 1892. In the words of Appellant's Brief (p. 27) "the mortgagees then came into equity with their "own application," and they were necessarily bound by whatever occurred thereafter.

Upon August 12, 1892, the receivers filed a report (p. 154). This stated, among other things, that when they were appointed the Railroad Company turned over to them \$480,427.91 in cash (p. 155); that the Company owed for supplies, operating accounts and taxes prior to the receivership \$1,244,510.93, of which \$779,974.79 arose subsequently to December 17, 1891 (p. 156); that the receivers had issued certificates amounting to \$684,964.38, and were paying therefrom the claims for which such fund was constituted (p. 163); that they had paid or deposited for payment of interest and rentals and car trust rentals to the amount of \$879,814 (p. 164); that the financial difficulties of the Railroad Company during the last two years "have prevented the operating officers from being able to expend "the proper amount for *new rails*, and upon the roadbed and "structures to keep the railroad in the condition in which it should

Statement.

"be maintained, and it will be necessary for the receivers, during the summer and autumn, to make a much larger expenditure than they would for ordinary maintenance" (p. 166).

Upon August 16, 1892, the *Central Trust Company* "as representing the several liens on the property," which were named and included all the mortgages upon the property of the Railroad Company, and various mortgages upon other parts of the system, together with others who were trustees for the holders of bonds secured by mortgages upon different parts of the system, petitioned the court to appoint Huidekoper and Foster as permanent receivers of the Railroad Company (pp. 167-172). Upon that day the court entered an order appointing said Huidekoper and Foster "permanent receivers in this cause with all and singular the rights, powers, titles, duties and obligations set forth in and by their original order of appointment, and the orders supplemental thereto, heretofore entered in this cause" (p. 173).

The statements of of the Principal Brief for Appellant that "the mortgagee did not obtain the receivership" (p. 27) and of the additional brief (p. 14) that "with the appointment of the receivers the mortgagees had nothing whatever to do" are erroneous, in view of the fact that the receivership was made permanent on the mortgagee's own motion; so too with the statement that "the consolidated bondholders did not apply for judicial aid" (*Id.*, p. 27). The brief (p. 28) quotes from the *Kneeland Case*, 136 U. S., 89, the statement "that the bondholders were not asking (the court) to take charge of the property, or thus impliedly consenting to its management of the property for their benefit." This was exactly what the *Central Trust Company* did in the present case.

The same order also appointed M. F. Pleasants and Thomas S. Atkins special masters to report to the court the amount and nature of all the indebtedness of the Railroad Company, and whether secured by mortgage, pledge or *other lien* upon any portion of the corporate property; and, if so, on what portion and the names of all creditors holding such demands; and directed that the special masters should give notice requiring all parties holding any indebtedness, claims or demands against the Railroad Company, except the holders of bonds secured by recorded mortgages, to file their claims with the masters on or before December 1, 1892; to the end that the validity, amount and respective priorities upon the property or income thereof

Statement.

might be determined and reported to the court, and that all creditors who failed to so present their claims should be precluded from asserting the same thereafter (pp. 173, 174).

Upon October 14, 1892, accordingly the Carnegie Steel Company, Limited, filed with the Masters an affidavit setting forth its said claim for \$125,067.39 (pp. 355-357).

Under date of May 1, 1893, a plan for the reorganization of the Richmond and Danville Railroad, together with the other properties, connected therewith, was issued by Drexel, Morgan & Company (pp. 503-563). This stated that the Richmond and Danville Railroad Company had stock outstanding to the amount of \$5,000,000, *nearly all owned by the Richmond Terminal Company* and floating debt to the amount of \$7,000,000 (p. 507). It stated also that, "since the appointment of receivers in June, 1892, it has been sought to hold together the various properties embraced in each system; and, with this object in view, coupons have been paid from bonds on many properties which in themselves do not warrant such payments" (p. 512). Participation in the plan was conditioned upon deposit of securities with Drexel, Morgan & Co. (p. 512). The ultimate object of the reorganization was that a new company should acquire so far as practicable the ownership of the Richmond and Danville system (pp. 513, 514). The new company was to issue \$75,000,000 of Preferred Stock and \$160,000,000 of Common Stock (p. 516).

In the adjustment of "Terminal Securities," it was provided that the holders of Terminal Company preferred stock should receive thirty-five per cent in new preferred stock, and sixty-five per cent of new common stock, and that holders of Terminal Company common stock (on payment of an assessment of \$12.50 per share) should receive twelve and a half per cent of new preferred stock, and one hundred per cent of new common stock (p. 521). Holders of \$5,500,000 of Terminal six per cent bonds were to receive certain bonds and preferred stock of the new company; and in explanation of the basis of this adjustment, it was stated that the Terminal bonds were secured, among other things, by \$1,760,000 of the capital stock of the Richmond and Danville Company, and by a lien on \$2,500,000 additional Richmond and Danville stock, subject to the lien of Terminal preferred stock (p. 522). The

Statement.

holders of \$11,000,000 of Terminal five per cent bonds were to receive certain proportions of the preferred and common stock of the new company (p. 521); and in explanation of this, it was stated that these bonds were secured, among other things, by \$708,100 of the stock of the Richmond and Danville Company, and by a lien on \$2,500,000 additional Richmond and Danville stock (pp. 522, 523). These provisions in favor of the holders of Terminal securities were, therefore, in large part based upon the fact that they owned the stock of the Richmond & Danville Company. Accordingly as a reason for assessment of the Terminal common stock, it was stated that "as the Terminal owns practically all the R. & D. stock, "an assessment of \$7,000,000 upon it becomes necessary to clear "off the R. & D. debt" (p. 524).

It was further stated that the future Richmond and Danville earnings " (like those of previous years) cannot be secured unless "the system is held together. In case of disintegration, which can "only be avoided by a thorough reorganization throughout, the "earnings of the R. & D. cannot fail to be greatly reduced. "As matters now stand (*i. e.*, without reorganization) the system can only be held together by paying interest on many "unprofitable lines (see pp. 39 to 41). By following this course to "some extent, the Receivers have become so depleted of cash (not- "withstanding the issue of Receivers' certificates) that they have "been obliged to default on the interest on all R. & D. mortgage "bonds, including the two issues which are ahead of the consolidated 5s" (p. 533, note †).

This plan was dated May 1, 1893, and the insolvency receivers were discharged by order entered July 17, 1893, and taking effect August 1, 1893 (pp. 240, 241). This shows that the Additional Brief for the appellant is erroneous in saying, "nor was there any attempt or scheme for reorganization until after the first receivership had closed" (fol. 15).

On or about June 30, 1893, the Central Trust Company filed in the same court a bill to foreclose the Consolidated Mortgage of the Richmond and Danville Railroad Company (pp. 223-239). This alleged that said Company made a mortgage upon its property on October 5, 1874, to secure an issue of bonds amounting to \$6,000,000, and on February 1, 1882, made a mortgage to secure an issue of debenture bonds amounting to \$4,000,000 (p. 224); on October 21, 1886,

Statement.

the Company determined to issue Consolidated Mortgage bonds to the amount of \$11,220,000 for the purpose of taking up prior liens, and, thereafter to an amount not exceeding \$15,000 per mile of the roads of the Railroad Company (p. 225); bonds thereunder were issued to the amount of \$4,527,350 (p. 235), and the Railroad Company made default in the interest due October 1, 1892, and April 1, 1893 (p. 235); the bill, therefore, prayed foreclosure with appointment of a receiver in the meantime (p. 238).

On July 17, 1893, *on motion of the Central Trust Company*, complainant in said foreclosure suit, and upon hearing all who were then parties to the suit, Samuel Spencer, Frederic W. Huidekoper and Reuben Foster were appointed receivers of all the property of the Railroad Company being then in possession of the receivers previously appointed (p. 240), and were authorized to take possession upon August 1, 1893, and continue to operate the property (p. 241). The order contained the following reservation: "Nothing in this order contained shall be construed to vacate any of the orders heretofore entered in the case of William P. Clyde and others; but the court reserves full power to act upon the masters' reports filed in the said cause, and in said cause to adjudge and decree upon the rights of creditors asserting a claim against the property of the said railroad company or income thereof in preference to the mortgage debt thereof, by orders to be entered in the said suit of William P. Clyde and others, upon notice to parties, with like effect upon the mortgaged property and income as if such orders were entered in this cause" (p. 243). This reservation was, of course, binding upon the bondholders (*New England Co. vs. Carnegie Co.*, 75 Fed. Rep., 59).

Upon August 21, 1893, an order was made appointing an auditor to pass the accounts of the prior receivership (p. 220). Upon March 3, 1894, the auditor reported, stating the accounts of the receivers from June 16, 1892, to July 31, 1893. The total of each side of the account was \$15,432,055.36. The receipts included, Cash on hand when the receivers were appointed, \$480,427.91, and Received from accounts prior to their appointment \$671,363.40, making together \$1,151,791.31, and Earnings during receivership, \$14,280,264.05. The disbursements included, Accounts prior to appointment of receivers, \$1,237,196.22; Interest and rentals, \$3,253,956.89; Car

Statement.

Trust Payment and Sinking Fund, \$481,893.16 ; Cash balance to new receivers, \$141,325.19 ; Other items, \$10,317,683.90. An order confirming this statement was made upon April 13, 1894 (pp. 222, 223). As will be seen hereafter, these figures vary slightly, but not substantially, from the facts proved upon the hearing of the present claim.

On August 21, 1893, an order was entered, by consent of all who were then parties, providing that the foreclosure receivers, "out of the income coming into their hands from the operation of the roads in their charge, which in their judgment can safely be used without prejudice to the payment of their own current obligations, are authorized, exercising their discretion as to the best interests of the trust estate, to pay the instalments hereafter accruing on car trust and equipment contracts, and on all rental obligations assumed by the Railroad Company, in any of the leases or operating contracts relating to the roads now being operated by the receivers " (p. 244). On the same day an order was made authorizing the receivers to pay interest upon the secured floating debt (p. 245).

On February 17, 1894, an order was made consolidating the Clyde suit and the foreclosure suit (pp. 249, 364).

On March 1, 1894 (p. 365), the Carnegie Steel Company, Limited, filed a petition further setting forth its claim. This stated the amount and origin thereof ; that the rails sold by it were used by the Richmond and Danville Company in its roadbed for the purpose of maintaining the same in condition to conduct its traffic and were necessary therefor ; that the petitioner was equitably entitled to have the earnings of the Railroad Company applied to the payment of its claim before any part thereof was paid to the holders of the bonded debt of said company ; that, prior to appointment of receivers in the Clyde case, large sums were paid by the Railroad Company to its bondholders in payment of interest and to others for their exclusive benefit, and since their appointment other large sums, more than sufficient to pay petitioner's claim, had been paid out and expended to the holders of said bonded debt, by reason whereof the petitioner's claim had been left unpaid, and the sums so paid out were

Statement.

from the earnings of the Railroad Company (pp. 366, 367) ; that, although the reorganization plan provided for payment of the floating debt, the reorganization committee did not intend to carry it out in that respect (p. 368), and the plan provided for issuing new securities to the stockholders of the old company, which course would be in fraud of creditors (p. 368). The petitioner, therefore, prayed to be allowed to intervene for protection of its rights (p. 370).

By order entered the same day the Carnegie Company was joined as a defendant in the cause (p. 375). On March 8, 1894, the Central Trust Company filed an answer to this petition admitting the facts, for the most part, but denying any right of the petitioner to priority (pp. 375-378).

Upon March 16, 1894, the Carnegie Company filed an amendment to this petition by which it claimed a lien also under Sec. 2485 of the Code of Virginia (pp. 379, 380).

On April 13, 1894, a decree of foreclosure was entered (p. 262). This found that bonds had been issued under the Consolidated Mortgage to the amount of \$4,527,350 (p. 273), and that default had been made in the payment of interest on October 1, 1892, and April 1, 1893 (p. 273) ; the total amount due was fixed at \$5,002,155.81 (p. 275), and sale of the premises was ordered (p. 276). It was ordered, also, that the purchaser should take subject to any claims which might thereafter be adjudged to be prior to the consolidated mortgage bonds (pp. 280, 282). Upon June 15, 1894, a report was filed of the sale under the decree, setting forth that the property had been sold for \$2,030,000, subject to all preferential claims (p. 291). On the same day an order was entered confirming the sale, subject to all claims which might be adjudged to have prior equity (p. 298), and the court reserved the right to enter orders binding upon the purchaser, the Southern Railway Company, directing payment of such claims (p. 299), and to order a resale if the same should not be made (p. 301).

Upon the hearing of the issues, raised by the petition of the Carnegie Company, as amended, and the answer of the Central Trust Company, before the Special Masters, the following facts were proved.

Statement.

Of the total issue of Consolidated Mortgage bonds \$1,621,000 were issued prior to May 1, 1888, and the balance, \$2,906,000, thereafter (pp. 385-389). All floating debt of the Railroad Company for materials and supplies furnished within six months prior to the receivership had been paid (p. 395). The total amount of labor and supply claims filed against the Richmond and Danville Company and remaining unpaid was \$318,324.71, which included the claim of the Carnegie Company (pp. 395, 398). This total amount, however, included a claim of Pullman's Palace Car Company for \$90,752.81, which was largely for car mileage, and of the Western Union Telegraph Company for \$22,186.53, which was largely for constructing telegraph lines. Deducting these, the only labor and supply claims remaining unpaid were that of the Carnegie Company for \$125,067.39, and those of various others aggregating \$80,317.98, making \$205,385.37 in all (pp. 395, 398).

When Huidekoper and Foster were appointed receivers under the Clyde bill, upon June 17, 1892, they received in cash from the Railroad Company \$480,427.91, and subsequently collected from earnings prior to the receivership \$671,363.40 (p. 399, 424), making together \$1,151,791.31 (pp. 403, 424). The total sum paid out on account of operations prior to the receivership was \$1,237,196.22 (pp. 403, 425), making the balance of payments over receipts for the period prior to the receivership \$85,404.91.

The operations of the insolvency receivership from June 17, 1892, to July 31, 1893, resulted in net earnings over operating expenses, including taxes, of \$3,297,792.31 (p. 399); these net earnings were used by the insolvency receivers in paying Extraordinary Expenses, principally for Construction and Equipment, \$559,734.62; and interest, rentals, dividends, sinking fund and car trust payments, with some other small items, \$3,330,346.99 (p. 422); but after deducting from the net earnings the amounts thus expended, the operations resulted in a deficit of \$592,289.30 (pp. 399, 422, 432). This deficit was provided for largely from cash or material received by the receivers upon their appointment (p. 400). The receivers turned over to their successors a cash balance of \$141,325.19 (pp. 424, 425, 426). The gain from operating the Richmond and Danville road proper between June 17, 1892, and July 31, 1893, was \$346,163.10 (p. 402). Interest was paid upon

Statement.

the first mortgage bonds in January, 1892, to the amount of \$179,310, and the coupons thereon due July 1, 1892, and January and July, 1893, were paid by the receivers, amounting in all to about \$525,000 (p. 401).

Between August 1, 1893, and December 31, 1893, the net earnings of the foreclosure receivers were \$1,127,861.09, as against which \$77,081.73 were expended for Extraordinary Expenses, principally Construction and Equipment, \$716,810.84 for Interest, Rentals, Sinking Fund and Car Trust payments (p. 423); \$11,785.73 on account of operations prior to the insolvency receivership (p. 403), and the cash balance remaining on hand was \$343,546.95 (p. 428). The foreclosure receivers turned over the property to the Southern Railway Company upon June 30, 1894 (p. 301). The record does not contain a detailed account of their operations between December 31, 1893, and June 30, 1894. A report which they made on July 13, 1894, stated, however, that their net liabilities at the close of the foreclosure receivership were about \$500,000, and that they turned over to the purchaser, the Southern Railway Company, supplies of about the same value (pp. 303, 306, 307). This, shows, of course, that the foreclosure receivers between August 1, 1893, and June 30, 1894, expended for Extraordinary Expenses, principally Construction and Equipment, \$77,081.73, and for Interest, Rentals, Sinking Fund and Car Trust payments \$716,810.84, and at the close had assets sufficient to pay their debts.

Upon May 19, 1894, the Masters reported that the Carnegie Company was a creditor of the Railroad Company in the amount of \$125,067.39; that it was not entitled to a preference by reason of diversion of earnings, but was entitled to a preference over all the consolidated bonds save \$1,621,000 thereof by reason of the Virginia lien statute of May 1, 1888 (Code, Sec. 2585, pp. 383-385). Exceptions were filed by both parties (pp. 468, 469). The Circuit Court sustained the exceptions of the Carnegie Company, finding that "the earnings of said defendant Railroad Company, which "should have been used for the payment of current expenses, including therein this claim, have been used for the benefit of mortgage creditors, in a sum more than sufficient to pay said claim in "full" (p. 470). The exceptions of the Central Trust Company were

Statement.

overruled (p. 471) and the Southern Railway Company was ordered to pay to the Carnegie Company the sum of \$154,895.97, being the amount of the claim with interest (p. 471).

The Southern Railway Company duly appealed to the Circuit Court of Appeals (pp. 472-478). The decree below was there affirmed upon November 10, 1896 (pp. 486-499; 76 Fed. Rep., 492). Upon January 12, 1897, this court granted a writ of *certiorari* (pp. 565, 566; 165 U. S., 720). The present hearing is upon the return to that writ.

FIRST.

If current earnings are used for the benefit of mortgage creditors before current expenses are paid, the mortgage security is chargeable in equity with restoration of the fund which has been thus misapplied.

The fact that the general supply creditor has given the Railroad Company a term of credit and accepted notes in the meantime does not affect his equities. When his debt becomes due, he is none the less entitled to have the current earnings applied to the payment thereof.

These rules are exactly laid down in *Burnham vs. Bowen*, 111 U. S., 776. The facts were that a receiver of the property of the Railroad Company was appointed upon January 13, 1875. At that time the Railroad Company was indebted to Bowen for coal furnished during the year 1874, for which, however, he held the acceptances of the company which were renewed after the appointment of the receiver. In January, 1876, Bowen petitioned for payment of his claim. Subsequently to the appointment of the receiver somewhat over \$25,000 was expended in purchasing lands and paying judgments for rights of way. On October 18, 1878, Bowen filed a further petition for the payment of his claim, and upon October 30, 1880, a decree was entered finding the amount due to him to be the sum of \$6,515.42, and declaring that the mortgaged property in the hands of the trustees under a decree of strict foreclosure, which had been entered theretofore, was equitably bound for the payment thereof. The court held that a debt contracted by a railroad corporation as part of its necessary operating expenses is a privileged debt entitled to be paid out of current income in case the mortgage trustees take possession, or a receiver be appointed in a foreclosure suit; that if the current income of the road is diverted to the improvement of the property by the trustees in possession or by the receiver, and the mortgage is foreclosed without payment of such debts for operating expenses, an order should be made for their payment out of the fund if the property is sold, or if a strict foreclosure is had they should be charged upon the income after foreclosure, and the fact that the supply creditor has accepted a note representing his claim does not affect his equities.

Points.

First. The mortgage security is chargeable with earnings diverted.

The court said: "The business of every railroad company is necessarily done more or less on credit, all parties understanding that current expenses are to be paid out of current earnings. Consequently, it almost always happens that the current income is incumbered to a greater or less extent with current debts made in the prosecution of the business out of which the income is derived. As was said in *Fosdick vs. Schall*, 99 U. S., 235, 252, 'the income (of a railroad company) out of which the mortgagee is to be paid is the net income obtained by deducting from the gross earnings what is required for necessary operating and managing expenses, proper equipment and useful improvements. Every railroad mortgagee in accepting his security impliedly agrees that the current debts made in the ordinary course of business shall be paid from the current receipts before he has any claim on the income.' Such being the case, when a court of chancery, in enforcing the rights of mortgage creditors, takes possession of a mortgaged railroad and thus deprives the company of the power of receiving any further earnings, it ought to do what the company would have been bound to do if it had remained in possession—that is to say, pay out of what it receives from earnings all the debts which in equity and good conscience, considering the character of the business, are chargeable upon such earnings. In other words, what may properly be termed the debts of the income should be paid from the income before it is applied in any way to the use of the mortgagees. The business of a railroad should be treated by a court of equity under such circumstances as a 'going concern,' not to be embarrassed by any unnecessary interference with the relations of those who are engaged in or affected by it. In the present case, as we have seen, the debt of Bowen was for current expenses and payable out of current earnings. It does not appear from anything in the case that there was any other liability on account of current expenses unprovided for when the receiver took possession, and there is nothing whatever to indicate that this debt would not have been paid at maturity from the earnings if the court had not interfered at the instance of the trustees for the protection of the mortgage creditors" (pp. 780, 781).

The court then considered the contention that as no part

Points.

First. The mortgage security is chargeable with earnings diverted.

of the income before the appointment of the receiver was used to pay the mortgage interest or to make permanent improvements on the property, or to increase the equipment, there was no such diversion of the funds belonging in equity to the labor and supply creditors as to make it proper to use the income of the receivership to pay them. It said that the debt due Bowen was incurred to keep the road running, and thus preserve the security of the bond creditors. There certainly was no complaint of a diversion by the company before the receiver was appointed of the current earnings from the payment of the current expenses. "Under these circumstances, we think the debt was a charge in equity on the continuing income, as well that which came into the hands of the court after the receiver was appointed as that before. When, therefore, the court took the earnings of the receivership and applied them to the payment of the fixed charges on the railroad structures, thus increasing the security of the bondholders at the expense of the labor and supply creditors, there was such a diversion of what is denominated in *Fosdick v. Schall* the 'current debt fund,' as to make it proper to require the mortgagees to pay it back. So far as current expense creditors are concerned, the court should use the income of the receivership in the way the company would have been bound in equity and good conscience to use it if no change in the possession had been made. This rule is in strict accordance with the decision in *Fosdick v. Schall*, which we see no reason to modify in any particular (p. 782). It was no waiver of any claim on the fund which might come into the hands of the receiver to renew the paper at maturity for the convenience of the holder. It was undoubtedly given originally to enable the coal company to use it as commercial paper if occasion required, and the renewal may have become desirable on account of the use which had been made of it" (p. 783). The court finally stated it to be the rule that, "if current earnings are used for the benefit of mortgage creditors before current expenses are paid, the mortgage security is chargeable in equity with the restoration of the fund which has been thus improperly applied to their use" (p. 783).

In *Hale vs. Frost*, 99 U. S., 389, the court held that a railway mortgage was a prior lien only upon the net earnings

Points.

First. The mortgage security is chargeable with earnings diverted.

of the road after the payment of all operating expenses, and that the earnings in the hands of a receiver were subject to the disposition of the court in the payment of claims having superior equities. Accordingly it sustained an order directing payment of an account for car springs and spirals and supplies for the machinery department furnished in part three years before the appointment of the receiver, but which the receiver continued to use, notwithstanding that the Railroad Company's notes had been given for the amount so due.

In *Union Trust Company vs. Morrison*, 125 U. S., 591, a railroad company procured an individual to become a surety upon an injunction bond given in a suit brought to prevent a levy upon its rolling stock. Six years afterward that suit was finally determined and the surety became liable. A receiver of the property had been appointed in the meantime at the instance of the mortgage trustees. It was held that the act of the surety on the injunction bond had operated to keep the property together and to keep the railroad as a going concern, and, as the testimony showed that the receivers had received income from which they might have discharged the liability, a decree was proper directing that a purchaser at the sale should pay the amount paid out by the surety.

In *St. Louis, Alton & Terre Haute R. R. Co. vs. Cleveland Co.*, 125 U. S., 658, a claim was made that the rental of a leased line was properly chargeable against the proceeds of the road realized from sale of the same under foreclosure. The court held that such rental was not properly a preferred debt. It stated the rules upon the subject as follows: "There are cases, it is true, where, owing to special circumstances, an equity arises in favor of certain classes of creditors of an insolvent railroad corporation, otherwise unsecured, by which they are entitled to outrank in priority of payment, even upon a distribution of the proceeds of a sale of the body of the property, those who are secured by prior mortgage liens. Illustrations and instances of these cases are to be found in *Fosdick vs. Schall*, 99 U. S., 235; *Miltenberger vs. Logansport Railway Co.*, 106 U. S., 286; *Union Trust Co. vs. Souther*, 107 U. S., 591; *Burnham vs. Bowen*, 111 U. S., 776; *Union Trust Co. vs. Illinois Midland Railway Co.*, 117 U. S., 434; *Dow vs. Memphis and Little Rock Railroad Co.*, 124 U. S., 652; *Sage vs. Memphis and Little Rock Railroad Co.*, *ante*, 361, and *Union Trust Co. vs. Morrison*, *ante*, 591. The rule governing in all these cases was stated by Chief-Justice WAITE in *Burnham vs.*

Points.

First. The mortgage security is chargeable with earnings diverted.

"Bowen, 111 U. S., 776, 783, as follows: 'That if current earnings are used for the benefit of mortgage creditors before current expenses are paid, the mortgage security is chargeable in equity with the restoration of the fund which has been thus improperly applied to their use.' *There has been no departure from this rule in any of the cases cited; it has been adhered to and reaffirmed in them all*" (pp. 673, 674).

In *Kneeland vs. American Loan and Trust Co.*, 136 U. S., 89, a receiver was appointed upon the application of a judgment creditor. This receivership continued four months, when a receiver in foreclosure was appointed. Upon a sale of the property a claim was made that car rentals which accrued during the first receivership should be given priority to the mortgage debt. The court held to the contrary. It said that the "case is not embarrassed by any matter of surplus earnings, for it appears, beyond any possibility of doubt, that from the time of the purchase of this rolling stock to the time of the final disposition of these cases the receipts did not equal the operating expenses. There was no diversion of the current earnings, either to the payment of interest or the permanent improvement of the property" (p. 96). To the same effect is *Morgan's Steamship Company vs. Texas Ry. Company*, 137 U. S., 171.

In *Thomas vs. Western Car Co.*, 149 U. S., 95, the question was again whether a claim for car rentals was entitled to priority as against the proceeds of the property. There was no question of diversion. The court held that it was not to be regarded as a preferred debt as against the *corpus* of the property (p. 112). This case was followed in *Pullman's Palace Car Co. vs. American Loan & Trust Co.*, 84 Fed. Rep., 18.

In *Virginia and Alabama Coal Co. vs. Central Railroad Co.*, 170 U. S., 355, the rules governing the present case have just been fully and conclusively restated. The Richmond and Danville Railroad Company was operating the lines of the Central Railroad and Banking Company of Georgia. Upon July 13, 1891, it made a contract with the Coal Company to furnish coal to the Central Company. Coal was furnished thereunder of the value of \$26,607.44, and this was used partly on the lines of the Central Company and partly on lines connected therewith, which were operated by the Richmond and Danville Company, and in part by the receivers of the Central Company after their appointment as hereafter stated. On March 4, 1892, an action was brought to vacate the lease under which the

Points.

First. The mortgage security is chargeable with earnings diverted.

Richmond and Danville Company was operating the lines of the Central Company, and a receiver of the latter company was appointed. On July 15, 1892, in an insolvency suit by the Central Company itself, this receivership was continued. On January 23, 1893, a dependent bill of foreclosure upon the main system of the Central Company was filed in the insolvency suit and the receivership was extended to that bill. On May 26, 1892, the Coal Company intervened and alleged the furnishing of the coal as above stated. In the proceedings on said intervention it was stipulated further that, since the receivership, the receivers of the Central Company had expended for betterments on its railroad lines, from the income of the road during the receivership, a sum much larger than the entire claim of the intervenors. The Circuit Court of Appeals held that the Coal Company was entitled to a decree for payment by the receivers for all coal furnished to lines under the contract and forming part of the system of the Central Company, including both what had been used before the receivers were appointed and that which was on hand at that time.

This decision was affirmed by this court. It stated the facts and rulings in *Burnham vs. Bowen*, 111 U. S., 776, and said, "it
 " was thus settled that where coal is purchased by a railroad
 " company for use in operating lines of railway owned and controlled
 " by it, in order that they may be continued as a going concern, and
 " where it was the expectation of the parties that the coal was to be
 " paid for out of the current earnings, the indebtedness, as between
 " the party furnishing the materials and supplies and the holders of
 " bonds secured by a mortgage upon the property, is a charge in
 " equity on the continuing income, as well that which may come
 " into the hands of a court after a receiver has been appointed as
 " that before. It is immaterial in such case, in determining the
 " right to be compensated out of the surplus earnings of the re-
 " ceivership, whether or not during the operation of the railroad by
 " the company there had been a diversion of income for the benefit
 " of the mortgage bondholders, either in payment of interest on
 " mortgage bonds or expenditures for permanent improvements upon
 " the property. Nor is the equity of a current supply claimant in
 " subsequent income arising from the operation of a railroad under
 " the direction of the court affected by the fact that, while the com-
 " pany is operating its road, its income is misappropriated and di-

Points.

First. The mortgage security is chargeable with earnings diverted.

"verted to purposes which do not inure to the benefit of the mortgage bondholders and are foreign to the beneficial maintenance, preservation and improvement of the property." In support of this the court cited with approval *Miltenberger vs. Logansport Co.*, 106 U. S., 286; *Union Trust Co. vs. Illinois Midland Co.*, 117 U. S., 434; and *Thomas vs. Western Car Co.*, 149 U. S., 95 (p. 365). * *

"The dominant feature of the doctrine, as applied in *Burnham vs. Bowen*, is that, where expenditures have been made which were essentially necessary to enable the road to be operated as a continuing business, and it was the expectation of the creditors that the indebtedness created would be paid out of the current earnings of the company, a superior equity arises in favor of the materialman as against the mortgage bonds in the income arising both before and after the appointment of a receiver from the operation of the property.

"The equity thus held to arise when a purchase of necessary current supplies is made by the owning company is not in any wise influenced by the fact that the company itself is the purchaser of the supplies, but is solely dependent upon the fact that the supplies are sold and purchased for use and that they are used in the operation of the road, that they are essential for such operation, and that the sale was not made simply upon personal credit, but upon the tacit or express understanding that the current earnings would be appropriated for the payment of the debt (p. 368). * *

"Upon the evidence contained in the record we hold that the contract upon which both intervenors relied—the deliveries of coal furnished by the Sloss Company being under the contract which had been made with the Virginia Company--was made with the Danville Company, but we conclude from the terms of the contract that the intention of the parties was that the coal was to be used in the operation of the lines of the Central Company, and that the mining companies did not rely simply upon the responsibility of the Danville Company, but, on the contrary, that the coal companies looked to the earnings of the Central system as the source from which the funds to pay for the coal to be furnished was to be derived.

"While it was established that during the time the Danville

Points.

First. The mortgage security is chargeable with earnings diverted.

“ Company was in control of the Central property a semi-annual
 “ instalment of interest—which exceeded the amount of the claims
 “ of the intervenors—was paid to the holders of the bonds of the
 “ Central Company, we cannot say that there was a diversion of in-
 “ come from the Central lines for such purpose. At the best, it
 “ could only be conjectured that such payment was probably made
 “ from that income. Whether, however, there was a diversion of in-
 “ come before the receivership, inuring to the benefit of
 “ the bondholders, the equity in favor of the Coal Company for
 “ payment out of subsequent income, as we have seen, survived and
 “ attached to the property when it was taken possession of by the
 “ receiver; and if a surplus of income was created by the opera-
 “ tions of the road under the receiver, sufficient to satisfy the
 “ claims of the intervenors, the right to demand that the surplus
 “ income be applied in satisfaction of the claims in question was
 “ undoubted. From the evidence we find that there was such sur-
 “ plus. It was stipulated in the record as a fact, ‘ that since the
 “ ‘ receivership, the receivers of the Central Railroad and Banking
 “ ‘ Company of Georgia have expended for betterments on its railroad
 “ ‘ lines from the income of the roads during the receivership a sum
 “ ‘ much larger than the entire claim of the intervenors ’ (p. 369).
 “ Keeping in mind the manifest purpose of this stipulation, which
 “ undoubtedly was to present the question of the right of the
 “ claimants to resort to the *corpus* of the estate for payment of their
 “ claims, we must give the term ‘ betterments ’ a broad and not a
 “ restricted meaning. So construed, it must be held to have re-
 “ ferred to expenditures for the improvement of the property as
 “ distinguished from mere payments for operating expenses and
 “ ordinary repairs, which are usual and legitimate terms of outlay
 “ from current receipts. This is the sense in which the term was
 “ understood by this court in *Union Trust Company vs. Illinois*
 “ *Midland Company*, 117 U. S., 434, where the validity of receiver’s
 “ certificates was upheld which had been paid out of the proceeds of
 “ the sale of the *corpus* of the property because issued to re-
 “ place earnings diverted from paying operating expenses and
 “ ordinary repairs for payment of betterments (p. 462).
 “ The circumstance that it is uncertain, from the terms of the stipu-
 “ lation, whether the expenditures for betterments were made by

Points.

First. The mortgage security is chargeable with earnings diverted.

"the receivers under the stockholders' bill, or under the bill filed by the Central Company or under the trustee's bill for foreclosure, is immaterial. Even though the mortgages securing the bonds provided for the sequestration by foreclosure of the income of the road for the benefit of the bondholders for reasons already stated, that income, until strict foreclosure or a sale of the road, was charged with the prior equity of unpaid supply claimants, such as those now before the court.

"In concluding that the claims of the intervenors were entitled to priority out of the surplus earnings which arose during the control of the road by the court, we must not be understood as in any wise detracting from the force of the intimations contained in the recent utterances of this court in the Kneeland (136 U. S., 89) and Thomas (149 U. S., 95) cases, as to the necessity of a court of equity confining itself within very restricted limits in the application of the doctrine that in certain cases a court, having a road or fund under its control, may be justified in awarding priority over the claims of mortgage bondholders to unsecured claims originating prior (p. 370) to a receivership. In the Kneeland case, however, the claim refused priority was based upon an alleged instrument of lease, and was for four months' rental of cars operated on a line of railroad by a receiver appointed at the suit of a judgment creditor, such receiver being succeeded in office by a receiver appointed in the foreclosure proceedings instituted by the trustees of the mortgage bondholders. It was held that the alleged contracts of lease were in substance and effect 'antecedent contracts of sale;' that in those contracts ample provision had been made by the vendor for his security by stipulations authorizing a retaking of the property upon failure to make payment promptly of the instalments of purchase money as they became due, and that the claim against the fund was in reality for a portion of the purchase price of the cars. Under these circumstances, the debt was held not to be embraced 'in the few specified and limited cases' in which the court 'has declared that unsecured claims were entitled to priority over mortgage debts;' and particular attention was called, among other things, to the fact that the receivership at the suit of the judgment creditor was not for the benefit of the mortgage bondholders, so

Points.

First. The mortgage security is chargeable with earnings diverted.

“ that it could not be asserted that the expenditures of such
 “ receivership were payable in any event out of the income or *corpus*
 “ of the property ; and the fact was also noticed that from the time
 “ of the purchase of the rolling stock in question in the suit to the
 “ time of the final disposition of the mortgage foreclosure the
 “ receipts did not equal the operating expenses, and there had been
 “ no diversion of the current earnings, either to the payment of
 “ interest or the permanent improvement of the property. In the
 “ Thomas case claims for rental of cars, which rental had accrued
 “ prior to the receivership, were denied priority over the mortgage
 “ bonds, but the facts in that case were such as to justify the con-
 “ clusion that the Car Company contracted ‘ upon the responsibility
 “ ‘ of the Railroad Company, and not in reliance upon the interposi-
 “ ‘ tion of a court of equity.’ In neither the Kneeland nor the
 “ Thomas case was there any intention to question the prior de-
 “ cisions of the court, which allowed priority to claims based upon
 “ the (p. 371) furnishing of essential and necessary current supplies,
 “ not sold upon mere personal credit, against the surplus income
 “ arising during the operation of the road under the direction of a
 “ court of equity (p. 372).”

In *Atkins vs. Petersburg Railroad Company*, 3 Hughes, 307, 2 Fed. Cases, 90, advances were made for the payment of back wages due, upon a distinct understanding that they should be reimbursed out of the first net earnings of the company, and that the money advanced should be paid to the employees. Some two years afterward a receiver was appointed. It was held that the advances must be paid, in preference to claims of mortgagees, out of income accruing while the road was in the custody of the court. The court stated the rule to be that a court may order the payment of such debts incurred by a railroad company before the appointment of a receiver, as it may authorize a receiver to contract and pay after his appointment, provided that the *corpus* of the property be not touched.

In *U. S. Trust Co. vs. N. Y., W. S. & B. Co.*, 25 Fed. Rep., 800, receivers were appointed under foreclosure of a mortgage. An application was made by a party who had furnished clocks to the company prior thereto for an order directing payment of his claim. The court held that if any income from the road had been left in the hands of the receiver for the payment of current running expenses there

Points.

First. The mortgage security is chargeable with earnings diverted.

would have been no difficulty about the case, as it would be only equitable to require the receiver to do what the company would be expected and ordered to do if it had remained in possession of the property; namely, to use the current receipts for the payment of current debts.

In *Farmers' L. & T. Co. vs. Vicksburg & M. R. Co.*, 33 Fed. Rep., 778, it was held that, where current debts are incurred by a railroad company in the course of its current business, they are chargeable upon the current income as against holders of mortgage bonds of such railroad, whether they accrued before or after the railroad went into the hands of a receiver; and the fact that such debts were incurred for betterments does not affect the right to have them paid out of the current income when the proofs show such betterments to have been necessary. In this case the claim arose from expenditures upon the right of way consisting in large part of furnishing rails necessary therefor.

In *Thomas vs. Peoria Ry. Co.*, 36 Fed. Rep., 808, the court (HARLAN, J.) stated that one of the rules governing the subject was that, while ordinarily this power is confined to the appropriation of the income from the receivership and the proceeds of mortgaged assets which have been taken from the company, cases may arise that will require the use of the proceeds of the sale of the mortgaged property in the same way; as when, before the appointment of the receiver, or in the *administration of the cause*, income applicable to the payment of old debts for current expenses is taken and used to make permanent improvements in the fixed property or to buy additional equipment.

In *Farmers' L. & T. Co. vs. Green Bay Co.*, 45 Fed. Rep., 664, the court stated that the power rests upon the fact of diversion of a fund belonging in equity to the general creditors or some of them (p. 665). The test is benefit to the *res* (p. 666).

In *Bound vs. South Carolina Railway Co.*, 58 Fed. Rep., 473, upon which the appellant has principally relied, the facts were totally different. There was no diversion of income in that case, and the question was whether the claim should be charged against the *corpus* of the property. The court held merely that there were no facts established making this course proper. The claim was not disallowed because the subject thereof was steel rails, as appellants' Additional Brief seems to intimate (p. 10). Nor was it held, as the Principal Brief for appellant (p. 36) states that the credit given "waived all claim upon the current earnings." The

Points.

First. The mortgage security is chargeable with earnings diverted.

court expressly said that the credit showed that, "during *that period*," the creditor contemplated application of the earnings to payment of interest. In *Lackawanna Iron Co. vs. Farmers' Loan and Trust Co.*, 79 Fed. Rep., 202, there seems to have been no diversion of income.

In *Wood vs. N. Y. & N. E. R. R. Co.*, 70 Fed. Rep., 741, the court held that there is no fixed and inflexible rule in respect to the allowance, out of the earnings of a railroad in the hands of a receiver, of unsecured claims for current debts, but each case is largely governed by its own circumstances. Such allowance does not depend on any fixed rule as to the time when the debts were contracted, nor upon the order appointing receivers. Where there has been a diversion of current income from the payment of current debts to the payment of interest on a mortgage, or the making of permanent improvements, there should be a restoration to the extent of such diversion, and, independently of diversion, debts may be preferred which are incurred for labor and supplies necessary to keep the road a going concern, or which grew out of indispensable business relations. Accordingly it was held that the appellee in the present case, the Carnegie Company, was entitled to payment for coupling links and pins and link steel necessary to operation of the railroad. This was affirmed by the Circuit Court of Appeals in 75 Fed. Rep., 54, 59.

In *Central Trust Co. vs. East Tennessee Co.*, 80 Fed. Rep., 624, 628, the court says that "from these cases it may be deduced that in respect of railroad mortgages there is an implied agreement that all proper operating expenses of such companies, while under control of the mortgagors, are to be paid out of current receipts, and that any diversion of such income by which current operating expenses are left unpaid, is a misappropriation of the income, and upon a proper showing the mortgagees receiving the benefit will be required to reimburse the fund applicable to the payment of these 'debts of the income,' to the extent of the diversion." Inasmuch as this case is cited by Appellant Brief (p. 21) as an authority, it is proper to note that no diversion of income was shown there.

In *New York Guaranty and Indemnity Company vs. Tacoma Railway Company*, 83 Fed. Rep., 365, the claim was for priority by reason of a debt arising from furnishing, more than two years before the appointment of the receiver, a cable to a cable railway. The court held that, inasmuch as the cable was necessary to keep the road a going concern, the claim for its price was entitled, on insolvency of the company and

Points.

First. The mortgage security is chargeable with earnings diverted.

the appointment of a receiver, to priority over the mortgage bonds, and that too without showing any diversion of income. The court stated it to be the principle established by the authorities that "such claims are preferred over the mortgage lien when they involve debts incurred which were necessary 'to keep the road a going concern,' or which are the outcome of indispensable business relations, a continuance of which involves the interests of the public and the traffic of the road" (p. 367).

To the same effect are *Central Trust Co. vs. East Tenn. Co.*, 30 Fed. Rep., 895, 897; *Easton vs. Houston Co.*, 38 Fed. Rep., 12, 14; *Finance Co. vs. Charles Co.*, 48 Fed. Rep., 188; *Northern Pacific Co. vs. Lamont*, 69 Fed. Rep. 23; *St. Louis Trust Co. vs. Riley*, 70 Fed. Rep., 32, 37; *Veatch vs. Amn. Loan & Trust Co.*, 84 Fed. Rep., 274; *Grand Trunk Railway Co. vs. Central Vermont Co.*, 88 Fed. Rep., 620; *Boston Safe Deposit Co. vs. Richmond and Danville Co.*, 8 U. S. Appeals, 547.

These authorities fully establish the rule that, when current earnings are used for the benefit of the mortgage creditors before the current expenses are paid, the mortgage security is chargeable in equity with restoration of the fund which has been thus misapplied.

The suggestion (Additional Brief for Appellant, p. 10) that these supplies were used for "construction purposes" and are, therefore, not entitled to payment, is sufficiently answered by the statement that they were used for "reconstruction purposes" (*Id.*, p. 10)—for reconstruction of the Railroad Company's worn-out or destroyed property" (*Id.*, p. 12). That certainly shows, beyond question, that they were supplies needed to maintain the railroad as a going concern and were, therefore, entitled to the benefit of the rules already stated. Those rules have frequently been applied to material similar to that now involved. Thus, in *Hale vs. Frost*, 99 U. S., 389, the subject of the claim was car springs and spirals and machinery supplies; in *Farmers' Loan and Trust Co. vs. Vicksburg Railroad Co.*, 33 Fed. Rep., 778, it was steel rails; in *Wood vs. New York & N. E. Ry. Company*, 70 Fed. Rep., 741, 75 Fed. Rep., 54, 59, it was coupling links and pins and link steel; in *New York Guaranty Co. vs. Tacoma Ry. Co.*, 83 Fed. Rep., 365, it was a steel cable.

Points.

First. The mortgage security is chargeable with earnings diverted.

The cases above stated fully answer the other objections urged by Appellant. Thus, *Burnham vs. Bowen*, 111 U. S., 776, holds that giving a term of credit represented by obligations of the company does not waive the right to priority, even although such obligations be renewed after the appointment of the receiver (p. 783), and the same thing is held in *Hale vs. Frost*, 99 U. S., 389; so, too, in *Bound vs. South Carolina Railway Co.*, 58 Fed. Rep., 473, the court significantly says that the effect of extending credit is to suspend the right to priority "*during that period.*" That there is no special limitation regarding the time when the supplies have been furnished is held in *Hale vs. Frost*, 99 U. S., 389; *Burnham vs. Bowen*, 111 U. S., 776; *Union Trust Co. vs. Morrison*, 125 U. S., 591; *Atkins vs. Co.*, 3 Hughes, 307; *Northern Pacific Co. vs. Lamont*, 69 Fed. Rep., 23; *N. Y. Guaranty Co. vs. Tacoma Ry. Co.*, 83 Fed. Rep., 365.

The present case is, therefore, within the general rules, if the facts establish diversion of the income.

Points.

SECOND.

Current earnings were used for the benefit of the mortgage creditors instead of paying therewith current expenses, including the debt of the Carnegie Company.

The consolidated mortgage was a lien both upon the property owned by the Railroad Company and also upon its more important leaseholds (pp. 56-75). The express purpose and the effect of all the proceedings taken was to keep the system together for the benefit of the security holders. The bill filed by Clyde and others upon June 15, 1892, alleged that "an eminent banking firm of New York City" is preparing a plan of reorganization, and any reorganization will require a considerable time (pp. 14, 15); that the "unity of the property, as now held and operated as an important trunk line, constitutes one of the most important ingredients of its value, and to permit its severance will result in a ruinous sacrifice to every interest in the property" (p. 16); that a race of diligence among the creditors should be prevented so that the property may be shielded and preserved as a valuable trust property by adequate judicial protection until such time as a financial reorganization can be perfected" (p. 16).

Accordingly, receivers were appointed for the precise purpose of preventing the enforcement of their claims by the creditors (pp. 20-22). It is elementary that this appointment gave the security holders no prior right to the application of the income for their benefit, but that it was subject in the hands of the receivers to the same rights regarding its use as if it were in the hands of the corporation (*Sage vs. Memphis Co.*, 125 U. S., 361; *Virginia & Alabama Coal Co. vs. Central Co.*, 170 U. S., 355; *New England Co. vs. Carnegie Co.*, 75 Fed. Rep., 54; *Veatch vs. American Loan & Trust Co.*, 84 Fed. Rep., 274).

Nevertheless, upon June 28, 1892, on application of the complainants and notice to the *Central Trust Company* (p. 135)—which was the trustee under the consolidated mortgage (p. 28), and many other mortgages upon the system (pp. 167, 168), and made no opposition to the application (p. 135)—

Points.

Second. Diversion of income has been shown here.

an order was made allowing the receivers to issue certificates to the amount of \$1,000,000 to take up preferential claims and at the same time directing that the receivers should apply the income of the road over and above operating expenses, not to paying the current liabilities of the Railroad Company for supplies, as the same became due, but to paying "the accruing instalments on car trust accounts and all maturing rental obligations assumed by the Railroad Company, on any of the leases or operating contracts upon the leased and operated roads now in the hands of the receivers, whether such rental obligations are evidenced by coupons or guaranteed stock dividends or otherwise" (pp. 25, 137).

It is well settled that claims of this sort were not entitled to priority in equity (Kneeland vs. Loan & Trust Co., 136 U. S., 89, and 138 U. S., 509; Quincy Co. vs. Humphreys, 145 U. S., 82; Thomas vs. Western Car Co., 149 U. S., 95; Central Trust Co. vs. Wabash, 46 Fed. Rep., 26). But the petition frankly stated that the object was to "preserve the system of roads against dismemberment * * * as well as to *preserve and increase the present market value of the bonds and stocks belonging to the receivership*" (pp. 26, 27). The complainants and the trustee for the bondholders, therefore, joined in procuring this order directing the receivers to divert the earnings generally from their natural use in paying the current expenses of the company, and this was done for the purpose of preserving and increasing the market value of the securities.

The reorganization agreement of May 1, 1893, correctly stated the course thereafter pursued by the receivers. It said that "since the appointment of the receivers, in June, 1892, it has been sought to hold together the various properties embraced in each system, and with this object in view coupons have been paid from bonds on many properties which in themselves do not warrant such payment (p. 512). As matters now stand (*i. e.*, without reorganization), the system can only be held together by paying interest on many unprofitable lines. By following this course to some extent the receivers have become so depleted of cash, notwithstanding the issue of receiver's certificates, that they have been obliged to default on the interest on all Richmond and Danville mortgage bonds, including the two issues which are ahead of the Consolidated 5s" (p. 533, note †). The ultimate object of the plan was

Points.

Second. Diversion of income has been shown here.

stated to be that a new company should acquire, as far as practicable, the ownership of the Richmond and Danville system (pp. 513, 514).

Inasmuch, then, as the bondholders themselves requested this diversion of the income in their own interest, it is useless to deny that it was done for their benefit.

Upon August 16, 1892, the Central Trust Company, as trustee of the consolidated mortgage, and many other mortgages upon the system (p. 168), was made a party to the suit, *upon condition that it submit to all orders theretofore entered* (p. 167.) Upon August 16, 1892, the receivership was continued *upon the Trust Company's petition* (pp. 167, 173, 174). As all action in the premises was had, to say the least, with the co-operation of the trustee for the bondholders, the facts are wholly different from those in *Kneeland vs. Trust Co.*, 136 U. S., 189, where there was no action by the trustee. Here the bondholders are chargeable with whatever was done. It is quite erroneous, therefore, to say that the trustee was "not a party to the Clyde suit and had no concern in it and no interest in the relief sought" (Additional Brief for Appellant, p. 2), or that "the mortgagee did not obtain the receivership" (Principal Brief for Appellant, p. 27).

The receivership in insolvency continued from June 17, 1892, until July 31, 1893. The receivers received, Cash on hand when they were appointed to the amount of \$480,427.91, and from Accounts prior to their appointment \$671,363.40, making together \$1,151,791.31 (pp. 403, 424). As against this they paid upon Accounts prior to their appointment \$1,237,196.22 (*Id.*). Their net payments by reason of operations prior to their appointment, therefore, amounted to only \$85,404.91.

During the insolvency receivership, the receivers expended for Car Trust Payments \$209,500 and Sinking Funds \$67,205; for Interest and Rentals \$3,249,481.89; for Construction \$232,134.34 and for Equipment \$81,390.32 (pp. 422, 425). Indeed, various orders authorizing permanent improvements are contained in the record (pp. 188, 248, 249, 252).

Points.

Second. Diversion of income has been shown here.

This shows the inaccuracy of the statements in the Principal Brief for the Appellant that "the expenditures for construction and new equipment during the receivership were inconsequential (p. 31)—there was little expense for improvement or new equipment" (p. 33).

The net earnings over operating expenses, including taxes, were \$3,297,792.31. These were applied to payment of the items just mentioned. The profit from operating the Richmond and Danville road proper was \$346,183.10, which was not applicable as against its creditors to paying losses arising from operation of other roads (*Ames vs. Union Pacific Co.*, 74 Fed. Rep., 335). The insolvency receivers turned over in cash to the foreclosure receivers \$141,325.19 (p. 222).

The foreclosure receivership followed immediately upon the insolvency receivership; the receivers first appointed, in accordance with the order of the court, turned the property over to themselves and another as receivers in foreclosure upon July 31, 1893 (pp. 218, 240, 241).

It is therefore error to say that the insolvency receivership was terminated and the receivers discharged before the appointment of the receivers in the foreclosure suit (Additional Brief for Appellant, p. 2).

The foreclosure receivership continued from August 1, 1893, until June 30, 1894. The foreclosure receivers between August 1, 1893, and December 31, 1893, realized net earnings to the amount of \$1,127,861.09 (p. 423) and expended for Construction and Equipment \$43,629.89, for Sinking Fund payments \$37,790, for Car Trust payments \$51,160, and for Interest and Rentals \$626,735.85 (p. 432). The record does not show the amount of their expenditures for these purposes between January 1 and June 30, 1894. It does show, however, that at the close of their term there were assets on hand sufficient to pay their debts (pp. 303, 306, 307).

These figures show that during the two receiverships between June 16, 1892, and December 31, 1893, the net earnings amounted to \$4,425,653.40. These were applied in paying Interest and Rentals \$3,876,217.74; Construction and Equipment, \$357,154.05; Car Trust payments, \$260,660, and Sinking Fund payments, \$104,995, amounting in all to \$4,599,026.79. So that the entire earnings during the receiverships were diverted from paying the debts of the

Points.

Second. Diversion of income has been shown here.

earnings to objects not entitled to preference for the purpose of "holding together the various properties" (p. 512); so as to "pre-serve and increase the present market value of the bonds and "stocks belonging to the receivership" (pp. 26, 27).

The floating debt of the Railroad Company for material and supplies amounts to merely \$205,385.37, which includes the claim of the Carnegie Company, amounting to \$125,067.39 (pp. 395, 398). For years the representatives of the bond and stock holders have been struggling to avoid the payment of this debt, even going so far as to assert that there was no diversion of income for their benefit.

It is idle to talk of the claim of the Carnegie Company as an effort "to displace the mortgage liens," or a claim against the *corpus* of the property (*Morgan's Co. vs. Texas Central Co.*, 137 U. S., 171, 198). The Additional Brief for the appellant wholly misses the point when it states (p. 3) that "the question presented is whether the mortgagees must pay the appellees' claim out of the remnant of the corpus of the mortgaged property, there being no surplus of earnings or income_whatever "under either receivership."

The ground of the claim is diversion of the earnings from the payment of current liabilities. Of that there can be no question. As has been seen, by the order of June 28, 1892, such diversion was expressly authorized and directed (p. 137), and when the receivers in foreclosure were appointed, upon August 21, 1893, an order was entered again providing that the receivers should pay instalments on the car trust and equipment contracts and on all rental obligations of the Railroad Company, without regard to the fact that current obligations remained unpaid (p. 244). To repeat, the facts show that these receivers in insolvency received net earnings amounting to \$3,297,793.31 and applied them in payment for betterments upon the property, \$232,134.34 (p. 422); in payment for interest, rentals and dividends, \$3,249,481.89; in payment for sinking funds and car trusts \$276,705, and paid over to their successors a cash balance of \$141,525.19 (p. 426); that the receivers in foreclosure during five months of their administration expended for construction and equipment \$43,629.89; for car trusts and sinking funds \$88,950, and

Points.

Second. Diversion of income has been shown here.

for interest and rentals \$626,735.85, and at the close had assets on hand sufficient to pay their debts (pp. 302, 303).

The Principal Brief for appellant states (pp. 20, 31) that the foreclosure receivers, after they went into possession on August 1, 1893, and before December 31, 1893, received from the prior receivership \$535,167.95, and paid out on account thereof \$1,040,861.31, and alleges that the foreclosure receivership thus paid out, on account of the prior receivership, \$505,693.36. This overlooks the fact that \$515,887.87 of these payments were for material furnished; that material to that amount was turned over by the receivers to the purchaser six months afterward, and that it was sufficient in value to discharge all debts of the foreclosure receivers at that time (pp. 302, 303). The Brief overlooks these facts also when it states that the purchasers paid into court \$455,144.50 to liquidate the deficit of the last receivers' operating debts (p. 33). This was offset by the material which the purchaser received (p. 303).

This establishes that the entire earnings of the insolvency receivership, \$3,297,792.91, and earnings of the foreclosure receivership to the amount of \$759,315.74 were diverted to expenditures for the benefit of the security holders.

The Additional Brief for appellant meets this by asserting, first, that the bondholders are not chargeable with what was done under the insolvency receivership. To this it is enough to say that their trustee was a party to the insolvency suit (p. 167), and that the receivers were made permanent upon its motion (p. 167).

As to the foreclosure receivership the Additional Brief presents a statement (p. 16) for the purpose of showing that the foreclosure receivers made large payments out of the corpus of the property upon account of transactions prior to their appointment. This shows that the foreclosure receivers received for cash and accounts prior to their appointment \$535,167.95. As against this are set two items which it is alleged were "paid by the foreclosure receivers for the liabilities of the former receivership." *The record shows that in point of fact neither one of these items was paid by the foreclosure receivers.* The first item of the Additional Brief is "they were compelled to pay on the debts and liabilities of the former receivership \$1,237,196.22." The proof is at the page referred to (p. 403) that this item was the sum paid by the insolvency receivers between June 16, 1892, and July 31, 1893, for claims accrued by reason of operations prior to June

Points.

Second. Diversion of income has been shown here.

16, 1892; that is to say, it was for claims arising before the insolvency receivers were appointed, and had all been paid before the foreclosure receivers were appointed. The same facts appear in the tabulated account on page 425, and are stated in the Principal Brief for appellant on pages 7, 30. The second item of the statement in the Additional Brief (p. 16) is: "And, also" (the foreclosure receivers were compelled to pay), "the certificates of the former " receivers " authorized by the court before the mortgagees became " parties, \$1,000,000." Reference is made to pages 403, 404, of the record. The testimony appearing there is as follows: "Q. " Have the receivers paid any part of the principal of the " \$1,000,000 of receivers' certificates? A. *They have not.*" In the tabulated statements of their operations (p. 435) no such payment appears, and the Principal Brief for the appellant (p. 8) states that they were "paid out of the sale proceeds," in accordance with the provisions of the decree (p. 11), "as a paramount charge to be paid by the purchaser" (p. 19). The statement of the Additional Brief is, therefore, wholly inaccurate, and is completely contradicted by the statement on page 34 of the Principal Brief, showing that neither of these items was paid by the foreclosure receivers.

The Principal Brief for appellant cites *St. Louis R. R. Co. vs. Cleveland Co.*, 125 U. S., 658, 676, as ruling that the payments for interest, dividends and rentals cannot be regarded as a diversion of the income. But that was a claim for rental of a leased line, sought to be charged upon the corpus of the mortgaged premises; there was no diversion of income. So, too, with *Central Trust Co. vs. Company*, 80 Fed. Rep., 624. In the present case, however, the interest, rentals and dividends were paid merely for the purpose of keeping the property together for the benefit of the bondholders, and they are now the holders of securities which have resulted from the success of that effort.

As against this enormous diversion of income, really nothing is suggested, except that receivers' certificates to the extent of less than \$1,000,000 were used in paying ante-receivership debts. But it has already been shown that the income from Cash on hand and Accounts prior to the receivership was only \$85,-404.91 less than all the ante-receivership debts which were paid (*supra*, p. 31; pp. 403, 424). Receivers' certificates were necessary only because this income was diverted to other purposes. Their use shows how entirely the income was employed in the interest

Points.

Second. Diversion of income has been shown here.

of the bondholders. The entire income was used in holding the property together for the bondholders, and they now hold securities resulting from that course, while they vigorously try to defeat the appellee's debt. As if to add insult to injury it is suggested that proceedings having this result were "accepted and approved (by " the creditors) as being for the best interest of the whole trust estate, including its own" (Principal Brief for appellant, p. 32).

In view of these facts, there is nothing in the contention that the remaining debts for materials furnished—amounting to no more than \$205,385.37, including the appellee's claim—should not be paid because receivers' certificates were issued to the amount of less than \$1,000,000, which ultimately went to pay in part the expenditures made in the interest of the bondholders. The complete inadequacy of the suggestion shows the absence of any defense to the appellee's claim. In the words of the Court of Appeals (p. 498), "it further " appears that the reorganization was effected through the sale " under the foreclosed mortgage to the Southern Railway Company, " and that in the reorganization the bondholders under the fore- " closed mortgage were secured by a new mortgage on the whole " system. It is a case, therefore, which does not suggest harsh " treatment of the Richmond and Danville supply creditors in the " interest of the bondholders of the foreclosed mortgage."

No clearer case of diversion of income could possibly be established, and the facts bring the case precisely within the rules laid down by the authorities. The order directing payment of this claim was, therefore, merely an application of well settled equitable principles.

Points.

THIRD.

The appellee was entitled to a lien by virtue of the Virginia statute.

When the rails in question were furnished, Section 2485 of the Code of Virginia provided that * * "All persons furnishing railroad iron, engines, cars, fuel, and all other supplies necessary to the operation of any railway, canal or other transportation company, or of any mining or manufacturing company, chartered under or by the laws of this state, or doing business within its limits, shall have a *prior lien on the franchise, gross earnings and on all the real and personal property of said company* which is used in operating the same, to the extent of the moneys due them by said company for such * * supplies; and no mortgage, deed of trust, sale, hypothecation or conveyance executed since the twenty-first day of March, eighteen hundred and seventy-seven, shall defeat or take precedence over said lien."

This section was amended upon February 15, 1892, (Virginia Statutes, 1891-1892, p. 362), but the amendment contained the proviso that "no right to or remedy upon a lien which has already accrued to any person shall be extended, abridged or otherwise affected hereby" (p. 363). It will be recalled that the rails had all been purchased and furnished prior to this amendment (*supra*, p. 2), so that it is without present importance.

The Brief for appellant states (p. 49) that "the Virginia Code regulating liens on railroads, provides that no mortgage, deed of trust, etc., *executed after* the taking effect of such Code on May 1, 1888, shall defeat or take precedence over said lien." It will be observed that the Code contains no such language. It provides that one furnishing railroad iron shall "have a prior lien, and no mortgage or deed of trust, sale, hypothecation or conveyance executed since the twenty-first day of March, eighteen hundred and seventy-seven shall defeat or take precedence over said liens." The Code, therefore, contains no recognition of mortgages executed prior to May, 1888, as prior to the lien.

This section went into effect upon May 1, 1888. The mortgage did not take precedence of the statutory lien because it was dated before that day. A mortgage is not a debt, but a mere security for a debt. It has no contractual force until the debt

Points.*Third. The appellee has a statutory lien.*

which it secures comes into existence (*Schafer vs. Reilly*, 50 N. Y., 61; *Lord vs. Yonkers Gas Co.*, 99 N. Y., 547, 556; *Hubbell vs. Syracuse Iron Works*, 14 N. Y. Supplmt., 345).

As was said in *Carpenter vs. Langan*, 16 Wallace, 271, 277, "the mortgage can have no separate existence. When "the notes are paid, the mortgage expires, it cannot survive "for a moment the debt which it secures. The mortgage "is a mere incident of the debt which it is given to secure." See also *Moore vs. Burnett*, 11 Ohio, 334, 342.

Until that time there is no *cestui que trust*; therefore, there is no trustee; no party to whom the mortgage can be delivered so as to have binding force and as delivery is a necessary part of execution of a written contract there is no "execution" of the mortgage. "A first mortgagee, whose mortgage is taken to cover "what is then due, and also future advances (within a fixed "amount), cannot claim the benefit of such advances in priority "over a second mortgagee, of whose mortgage he had notice "at the time of its execution, and before he made these new advances" (*Hopkinson vs. Rolt*, 9 House of Lords Cases, 514; *Bradford Banking Co. vs. Briggs*, 12 App. Cas., 29). It follows necessarily that the mortgage took effect as security for the bonds only to the extent, and at the time, of their actual issue. In *Newgass vs. Atlantic Co.*, 56 Fed. Rep., 676, this precise point was decided under the statute now involved. The mortgage there had been recorded prior to May 1, 1888, and some of the bonds issued before and some after that date. The court said that "the finding "of the master that only the bonds issued before May 1, 1888, were "a prior lien * * * is clearly right."

The case of *Central Trust Co. vs. Continental Iron Works*, 51 N. J. Equity, 605, cited by counsel at the argument below, will be found to be decided upon the authority of *Jacobus vs. Mutual Benefit Life Ins. Co.*, 12 C. E. Green, 604, which was decided by a divided court and rests upon the peculiar language of the New Jersey statute, which expressly made the statutory lien "subject only to all mortgages and other "encumbrances created and recorded or registered, prior to the "commencement of the building" (p. 611). Upon any view of the cases, they are inconsistent with sound reason and settled principles of equity. Logically considered, they lead to the absurdity that a mortgage which is intended only as a security for a debt, may take effect to the exclusion of a statutory

Points.

Third. The appellee has a statutory lien.

lien, when in fact there is no such debt. The cases of *Brooks vs. Railway Co.*, 101 U. S., 443, and *Meyer vs. Hornby*, *Ibid.*, 728, show that a different view is taken of the matter by this court.

The case of *Claffin vs. Railroad Co.*, 4 Hughes, 12, so far from supporting this contention, is distinctly against it. The facts of the case are somewhat complicated, and, in order to properly understand some expressions of the opinion, they must be read in connection with the facts upon each point covered thereby. One of the elementary propositions asserted in the opinion is "that, as a mortgage is but an incident of the debt it secures, if there is no debt, there can be no mortgage" (p. 20). Again the opinion says, "the contract with the individual bondholder is no more than that he shall have his due proportion of the security the mortgage on its face implies" (p. 21). The necessary and logical deduction from these propositions is that *only* to the extent that there are bondholders is the mortgage effective for any purpose.

The question was one of priority as between holders of two classes of bonds secured by different mortgages, namely, a first and second mortgage. It was claimed by holders of bonds secured by the second mortgage that they were entitled to priority over certain bonds secured by the first mortgage, because the latter were not issued and in the hands of *bona fide* holders prior to the issue of the bonds secured by the second mortgage. It appears from the opinion that the "surplus bonds" secured by the first mortgage had been used as collateral prior to the date of the second mortgage; that when taken in by the mortgagor they had not been canceled, but were kept on hand to be used as wanted. After stating this fact the court said, "the second mortgage trustees might have required all on hand when the second mortgage was made to be retired, and the lien of the first mortgage confined to those already out. This, however, they did not see fit to do, and, consequently, the rights of those they represent depend on the effect to be given the instrument they took; and in this, as it seems to me, the intention of the company to keep the first mortgage on foot as a standing and continuing security to the full extent of the originally authorized issue is clearly manifested. The language is 'that the mortgage hereinabove granted shall be and continue at all times subject to the lien of the mortgage executed by the South Carolina Railroad Company to Henry Gourdin, H. P. Walker and

Points.

Third. The appellee has a statutory lien.

“ ‘James M. Calder, and to all renewals or extensions of said mortgage or of the bonds secured thereby, to the full amount of the principal of said bonds.’ This, I think, means not only the principal of the bonds then out, but of all that might thereafter lawfully be put out under the mortgage, as well. The use which the company had been making, and which it was no doubt expected would be continued, of the surplus bonds remaining after providing for the old issues, must have been in the minds of all. One of the trustees under the second mortgage was at the time a director of the company, and the idea of actually canceling any of the old lien in favor of the new seems never to have been suggested by any one” (pp. 19, 20). So that the question in that case was one of intention of the parties as derived from and explained by the language of the second mortgage and the circumstances attending the issue of bonds and execution of the mortgages. There was no question of priority of a statutory lien over unissued bonds, and it seems clear from the opinion that upon the facts of this case the court would have given priority to the statutory lien.

The case of *Central Trust Co. vs. Louisville Co.*, 70 Fed. Rep., 282, seems to support the appellant's contention that the owner of property, by putting a mortgage upon it, can defeat any liens thereon irrespective of whether the mortgage secures any indebtedness. This is not in accordance with well-settled rules and would be an easy way to defeat the rights of lienors and creditors.

The statute, therefore, established a priority of lien against all mortgage bonds issued subsequently to its passage on May 1, 1888. The proof (pp. 386-389) shows the total amount of bonds outstanding, and secured by the mortgage to be \$4,527,000. Of this amount \$1,621,000 were issued prior to May 1, 1888, and the remainder, \$2,906,000, were issued subsequent to that date, and, to a great extent, subsequent to the sale and delivery of the rails in question (p. 385). The bonds issued subsequent to May 1, 1888, were, therefore, subject to the terms of this lien statute; the appellee has a lien for the materials which it furnished prior to the lien of the bonds so issued and amounting to \$2,906,000.

In the course of the vigorous efforts which appellant has made to avoid paying for these rails, it has urged several objections to this statutory lien. These will now be considered separately.

Points.

Third. The appellee has a statutory lien.

1. It has been urged that the statute does not apply here, because the rails were purchased by and delivered to the Railroad Company in Pennsylvania on board cars for transportation to a point in Virginia.

There is no foundation for this point in the statute. It makes no reference either to delivery or use within the state. The lien exists, provided the supplies be furnished to any company "chartered under or by the laws of this state, or doing business within its limits." But, still further, in the present case the contract of purchase (pp. 370-374) shows that the rails were to be shipped to points in Virginia, Strasburgh or Lynchburgh, and it can make no possible difference in principle whether the purchase and delivery took place in Pennsylvania. The Railroad Company was none the less "a railway company chartered under and by the laws of Virginia" and sales to it were none the less withip the terms of the lien statute.

The case of Birmingham Iron Foundry vs. Glen Cove Starch Manufacturing Co., 78 N. Y., 30, cited by opposing counsel at the argument below, does not support his contention. In that case a Connecticut corporation contracted to build an engine for the defendant and furnish a suitable man to superintend its erection on defendant's land in New York. The Connecticut company procured the plaintiff, another Connecticut corporation, to *make for it and deliver to it in Connecticut* a bed-plate for the engine, without, as appears from the report of the case, any reference to the original contract. The plaintiff, which built the bed-plate and delivered it in Connecticut, not being paid therefor by its employer, sought to establish a lien on defendant's land in New York under a New York lien statute. The Court of Appeals naturally held that there could be no lien under the New York statute for work ordered, completed and delivered in Connecticut under such circumstances. Upon these facts there was no privity between the plaintiff and defendant. Had the original contractor with the New York defendant sought to enforce a lien under the statute for the engine built and set up on defendant's land in New York, the case would have been altogether different, although, nominally, the title to the engine was to pass upon delivery in Connecticut. It is to be observed, however, that the court entertained grave doubt whether the engine was an "improvement upon land" within the meaning of the New York statute.

Points.

Third. The appellee has a statutory lien.

The case of *St. Louis Bridge and Construction Co. vs. Memphis, Carthage and Northwestern Co.*, 72 Mo., 664, is more to the point, and is distinctly against this contention. The statute of Missouri gave a lien to "all persons who shall do any work or labor in constructing "or improving the roadbed, etc., of any railroad company incorporated under the laws of this state, * * * "and all persons who shall furnish ties, fuel, bridges " * * * to such railroad company." The defendant, a railroad corporation of Missouri, extended its road into Kansas, and plaintiff furnished materials for and did work upon a bridge of the company in Kansas. It was held that there was nothing in the act restricting the right to a lien to those who perform work or furnish supplies within the limits of this state; and, further, that, if a part of the railroad lay within and a part without the state, a lien might be enforced against that part within the state, though the work was done or material furnished on the part without the state.

2. It has been claimed that there can be no lien, because after the Railroad Company received the rails it saw fit to use a large part of them otherwise than upon its main line.

This, however, is covered by the suggestions just made. The statute gives the lien to one who furnishes supplies to a company "chartered under or by the laws of this state, or doing business "within its limits." The lien does not depend upon the use which the company sees fit to make of the materials furnished. That circumstance is quite immaterial.

In *Brooks vs. Railway Co.*, 101 U. S., 443, and *Meyer vs. Hornby*, *Id.*, 728, this precise question was decided against this contention. A lien was claimed for work done upon a railroad; it was contended that the lien affected merely the precise part of the line upon which the work was done, but the court held that it covered the entire line.

In the very recent case of *Virginia & Alabama Coal Co. vs. Central Railroad Co.*, 170 U. S., 355, it was urged that there could be no lien on the main line for coal used on branches, but the court held that the main line was liable for coal consumed on any part of the system. To similar effect are *Farmers' Loan and Trust Co. vs. Newman*, 127 U. S., 649, 659, 660; *Central Trust Co. vs. Wabash Co.*, 30 Fed. Rep., 332; *Central Trust Co. vs. Georgia Pacific Co.*, 87 Fed. Rep., 228.

Points.

Third. The appellee has a statutory lien.

3. Appellant has objected to the lien upon the ground that there was no notice thereof filed within six months after the claim fell due. But, under the circumstances of the present case, there is nothing in this.

The notice is required by Section 2486 to be filed "within six months after his claim has fallen due"—that is to say, a considerable time after the materials have been furnished. But the terms of Section 2485 are that "all persons furnishing railroad iron * * and all other supplies necessary to the operation of any railway * * company * * chartered under or by the laws of this state * * shall have a prior lien on the franchise, gross earnings, etc., * * of said company." The lien, therefore, being dependent upon the fact of furnishing the material, is effective from that moment. This is the provision of the statute and so it is held by authority.

In *Merchants' Bank vs. Dashiell*, 25 Grattan, 616, an act of the Legislature of Virginia of July, 1870, gave to parties performing labor or furnishing material for the construction, repair and improvement of any building or other property, a lien as hereinafter provided, and provided that "a general contractor wishing to avail himself of the lien given him by the preceding section, shall file within thirty days after the completion of the work, in the clerk's office of the county or corporation court, of the county or corporation in which the property upon which a lien is sought to be secured is situated, * * a true account of the work done or material furnished, sworn to by said claimant or his agent, with a statement attached signifying his intention to claim the benefit of said lien." Under this statute a claim of lien was asserted by a contractor who was prevented by the owner from completing the building. The claim was resisted upon the ground that, the building not having been completed, the case provided for by the statute had not arisen and could not arise. It was held that the act created a lien which attached to the property as soon as the work was commenced, "so that while it is in the course of construction no notice is necessary. After it is completed and delivered to the owner, (the mechanic) in order to retain his lien, must, within thirty days, comply with the requirements of the statute. And this is required in order to notify all persons dealing with the owner that

Points.

Third. The appellee has a statutory lien.

"the mechanic's lien to which the law gives preference still attaches to the property" (p. 625).

The same thing was held in *Courtney vs. Insurance Company of North America*, 4 U. S. Appeals, 140; *Central Trust Co. vs. Richmond Co.*, 31 U. S. App., 675, 688.

The notice, then, does not create the lien. It merely gives public notice of its continued assertion. In the present case, therefore, the lien attached when the rails were furnished. Section 2486 requires the notice to be filed "within six months after his claim has fallen due." In *Newgass vs. Atlantic & Danville Railway Company*, 56 Fed. Rep., 676, 683, the court said in applying this section, "this statute is too plain to bear discussion. The date of furnishing the supplies has nothing to do with it. It is governed by the date when the claim matures. If the claim is payable in instalments, the statute means six months after the last instalment is due, for the claim has certainly not fallen due until all the instalments are due." And the fact that a term of credit was given did not defeat the lien (*McMurray vs. Brown*, 91 U. S., 257; *Chicago Ry. Co. vs. Union Mill Co.*, 109 U. S., 702, 721, 722; *Van Stone vs. Stillwell Co.*, 142 U. S., 128, 136).

To similar effect are *Central Trust Co. vs. Chicago Co.*, 52 Fed. Rep., 598; *Fidelity Trust Co. vs. Roanoke Iron Co.*, 81 Fed. Rep., 439, 450, 451.

The last instalment matured on October 7, 1892 (*supra*, p. 2.) or as the Appellant's Brief concedes (p. 14), in any aspect of the case upon May 28, 1892, as to a small part of the claim, and later as to the balance. The appellee, therefore, had until six months thereafter to comply with the statutory requirement regarding the filing of notice.

As already stated, upon June 15, 16 and 17, 1892, orders were made in the Clyde case appointing receivers of the property of the Railroad Company (pp. 20-23, 155). On August 16, 1892, before the appellee's time to file the statutory notice had expired or even begun to run, as to the greater part of its claim, the court entered an order, in the same case, appointing M. F. Pleasants and Thomas S. Atkins, Special Masters in Chancery, "to hear evidence and take the necessary accounts and report to the court with all convenient speed the amount, and nature of all the indebtedness of the said Richmond and Danville Railroad Com-

Points.

Third. The appellee has a statutory lien.

"pany, and whether secured by mortgage, pledge or *other lien* upon "any portion of the corporate property," etc. (p. 173). It has been seen that the appellee then had a valid and subsisting statutory lien upon the "franchise, gross earnings, and all the real and personal "property of said company." The Circuit Court, at this stage, took possession of the property, and directed its masters to take proof regarding the indebtedness of the company, and any *liens* on the property.

The appellee could not have filed any notice before this time for that could not be done until "within six months *after* his claim "has fallen due," and its claim for the most part did not become due until after the masters were appointed. As already said, in the meantime the Circuit Court took possession of the property and proceeded with its administration. It would have been entirely futile after this to file a notice of lien. No other court could enforce the lien and the reason for filing the notice had ceased to exist—there was no necessity of giving record notice to other parties in interest of the existence of the lien. The jurisdiction of the Circuit Court over the property and assets was complete and exclusive, and it was proceeding to ascertain all the facts. No one could be prejudiced by failure to give record notice of the existence of the lien or aided by giving such notice. Accordingly, it is well settled that the notice was not necessary.

In *Richmond vs. Irons*, 121 U. S., 27, 51-55, the action was a creditor's bill. It was held that the rights of creditors became fixed by the filing of the bill and were not affected by anything which happened thereafter, as the running of the statute of limitations.

In *Seventh National Bank vs. Shenandoah Iron Co.*, 35 Fed. Rep., 436; *Newgass vs. Atlantic & Danville Co.*, 56 Fed. Rep., 676, 683, and again, 72 Fed. Rep., 712, 716; *Fidelity Co. vs. Roanoke Co.*, 81 Fed. Rep., 439, 453, under this identical statute it was held that after appointment of masters to take proof of claims, it was unnecessary to file any notice of lien.

There is, therefore, nothing in these various objections urged by the appellant and the appellee was entitled to a lien by virtue of the Virginia statute.

Points.

Third. The appellee has a statutory lien.

It seems unnecessary to follow the refinements of Appellant's Brief (pp. 40-63), as to the relative rights of the holders of bonds issued before and after May 1, 1888, or as to the manner in which the court will enforce this lien. These are not practical questions. It has already been abundantly shown that the sale in foreclosure was merely a step in the reorganization under which the appellant was organized and the former bondholders became holders of its securities, and that the court at all times carefully reserved the right to direct the purchaser to pay claims having priority to the consolidated mortgage (pp. 281, 282, 298). The court has found that the appellee had such priority and has directed payment of its claim by the purchaser. The questions raised are therefore without importance or present application.

Points.

FOURTH.

As to creditors of the Richmond and Danville Company, the plan under which the appellee was organized was ineffectual, and the property in its hands is subject to the debts of the former company.

Upon June 15, 1892, the bill in the Clyde suit was filed. This was the first step in the proceedings which led ultimately to formation of the appellant. The bill alleged that "an eminent banking firm of New York City" was investigating the Richmond and Danville Company's affairs with the view of preparing a plan of reorganization, but had reached no conclusion, and any reorganization would require considerable time (pp. 14, 15); "that the unity of the property, as now held and operated as an important trunk line, constitutes one of the most important ingredients of its value; and that to permit its severance will result in a ruinous sacrifice to every interest in the property; * * that, unless the court, in view of the impending and inevitable defaults (set forth in the bill), will deal with the property as a single trust fund and take it into judicial custody for the protection of every interest therein, immediately upon default, individual creditors will assert their remedies in different courts in the several states; a race of diligence will result. Judgments and priorities will be attempted, * * and a most important and valuable trust property will be dismembered by the clashing decrees of the many courts exercising jurisdiction at the suit of separate creditors, which might be shielded and preserved as a valuable single trust property by adequate judicial protection until such time as a satisfactory financial reorganization could be perfected" (p. 16).

No default had then been made in the payment of interest or rentals (pp. 400, 401), but the bill was filed by certain stockholders and creditors to hinder the creditors generally from enforcing their rights, and to hold the property together for purposes of reorganization (*Sage vs. Memphis Co.*, 125 U. S., 361; *Brown vs. Lake Superior Co.*, 134 U. S., 530; *Leadville Co. vs. McCreery*, 141 U. S., 475).

Upon the same day, June 15, 1892, an order was, accordingly, made by the court appointing Huidekoper and Foster as receivers

Points.

Fourth. The property is subject in equity to appellee's claim.

of all the property of the Railroad Company (p. 20), and upon August 16, 1892, upon motion of the Central Trust Company as representing the bondholders, the appointment of these receivers was made permanent (pp. 167, 172).

Under date of May 1, 1893, a plan for the reorganization of the Richmond and Danville Railroad, together with the other properties connected therewith, was issued by Drexel, Morgan & Company (pp. 503-563). This was attached to the petition of the appellee and admitted by the answer (pp. 367, 377, 378). It stated that the Railroad Company had stock outstanding to the amount of \$5,000,000, nearly all owned by the Richmond Terminal Company, and floating debt to the amount of \$7,000,000 (p. 507). It stated also that, "since the appointment of "receivers, in June, 1892, it has been sought to hold together the "various properties embraced in each system, and with this object "in view coupons have been paid from bonds on many properties "which in themselves do not warrant such payments" (p. 512). Participation in the plan was conditioned upon deposit of securities with Drexel, Morgan & Company (p. 512). The ultimate object of the reorganization was that the new company should acquire, so far as practicable, the ownership of the Richmond and Danville system (pp. 513, 514). The new company was to issue \$75,000,000 of preferred stock and \$160,000,000 of common stock (p. 516).

It will be recalled that the stock of the Richmond and Danville Company was nearly all owned by the Terminal Company (p. 507). In the adjustment of "Terminal securities" it was provided that (1) the holders of Terminal Company preferred stock should receive thirty-five per cent in new preferred stock and sixty-five per cent in new common stock; (2) holders of Terminal Company common stock (on payment of an assessment of \$12.50 per share), should receive twelve and one-half per cent in new preferred stock and one hundred per cent in new common stock (p. 521). (3) The holders of \$5,500,000 of Terminal six per cent bonds were to receive certain bonds and preferred stock of the new company, and in explanation of the basis of this adjustment it was stated that the Terminal bonds were secured, among other things, by \$1,760,000 of the capital stock of the Richmond and Danville Company, and by a

Points.

Fourth. The property is subject in equity to appellee's claim.

lien on \$2,500,000 additional Richmond and Danville stock subject to the lien of Terminal preferred stock (p. 522). (4) The holders of \$11,000,000 of Terminal five per cent bonds were to receive certain proportions of the preferred and common stock of the new company (p. 521), and in explanation of this it was stated that these bonds were secured, among other things, by \$708,100 of the stock of the Richmond and Danville Company and by a lien on \$2,500,000 additional Richmond and Danville stock (pp. 522, 523).

These provisions in favor of the holders of Terminal securities were, therefore, in large part based upon the fact that they held the stock of the Richmond and Danville Company. Accordingly, as a reason for assessment of the Terminal common stock, it was stated that, "as the Terminal owns practically all the R. & D. stock, an assessment of \$7,000,000 upon it becomes necessary to clear off the "R. & D. debt" (p. 524).

On or about June 30, 1893, the Central Trust Company filed in the same court a bill to foreclose the consolidated mortgage of the Richmond and Danville Railroad Company (p. 223). Upon March 1, 1894, the Carnegie Steel Company, Limited, this appellee, filed a petition setting forth its claim and alleging, among other things, that, although the reorganization plan provided for payment of the floating debt, the reorganization committee did not intend to carry it out in that respect (p. 368), and the plan provided for issuing new securities to the stockholders of the old company, which course would be in fraud of its creditors (p. 368). The petitioner, therefore, prayed to be allowed to intervene for protection of its rights (p. 370), and by order entered the same day it was joined as a defendant in the cause (p. 375).

On April 13, 1894, a decree of foreclosure was entered and a sale of the premises was ordered (pp. 262-276). It was ordered also that the purchaser should take subject to any claims which might thereafter be adjudged prior to the consolidated mortgage bonds (pp. 280, 282). Upon June 15, 1894, a report was filed of the sale under the decree, setting forth that the property had been sold for \$2,030,000, subject to all preferential claims (p. 291). On the same day an order was entered confirming the sale subject to all claims which might be adjudged to have prior equity (p. 298), and the

Points.

Fourth. The property is subject in Equity to appellee's claim.

court reserved the right to enter orders binding upon the purchaser, the Southern Railway Company, directing payment of such claims and to order a resale if the same should not be made (pp. 298, 301)

All these proceedings were, therefore, merely steps in the process of reorganization. The bill in the Clyde case alleged that a reorganization was in contemplation and the plan was subsequently devised, providing that holders of Terminal Company bonds and preferred stock should receive large amounts of bonds and common and preferred stock of the reorganized company, without the payment of any assessment, for the reason that they were holders of stock of the Richmond and Danville Company. The plan provided also that holders of common stock of the Terminal Company should, upon paying a large assessment, receive stock in the reorganized company because they were holders of stock in the Richmond and Danville Company. The necessity for this was said to arise from the fact that the cash was needed in order to pay off the floating debt of the Richmond and Danville Company. The existence of that debt and the necessity of paying it were, therefore, fully recognized.

Thereafter the foreclosure was had merely for the purpose of carrying out the plan; the appellant, The Southern Railway Company, was organized and became the purchaser. The stockholders of the Richmond and Danville Company have received their securities in the new company, and are, therefore, *pro tanto* the owners of its property, but the present effort is to avoid payment of the small amount still remaining unpaid of the floating debt of the former company.

It is clear that this result by which the stockholders of the former company are preferred to its creditors is fraudulent as to such creditors. As this court of equity still has control of the property (pp. 260, 262, 298) it will direct payment therefrom of such debt in preference to any rights of such former stockholders.

The general rules upon the subject have been stated by this court as follows: "Moneys derived from the sale and transfer of
"the franchises and capital stock of an incorporated company are
"the assets of the corporation, and, as such, constitute a fund

Points.

Fourth. The property is subject in equity to appellee's claim.

"for the payment of its debts; and, if held by the corporation itself, and so invested as to be subject to legal process, the fund may be seized by a creditor on such process, and subjected to the payment of the indebtedness of the company. Where the fund has been improperly distributed among the stockholders, or passed into the hands of third persons not *bona fide* creditors or purchasers, the established rule in equity is, if the debts of the company remain unpaid, that such holders take the fund charged with the trust in favor of the creditors, which a court of equity will enforce and compel the application of the same to the satisfaction of the debts of the corporation" (*Scammon vs. Kimball*, 92 U. S., 362, 367). It is well settled that these rules apply to all agreements or arrangements which reserve benefits to stockholders without providing for payment of the debts of a corporation. It makes no difference that the result is accomplished by means of a judicial sale or of a statute.

In *Railroad Company vs. Howard*, 7 Wallace, 392, an agreement was entered into among the holders of the stock and bonds of the Mississippi and Missouri Railroad Company for the foreclosure and sale of the property of the company. Another railroad company had already offered to pay \$5,500,000 for the property, and it was agreed among the said stock and bondholders that the purchase money should be distributed among them at varying rates. The stockholders were to receive sixteen per cent of the par value of their stock, amounting to \$552,400. A committee was appointed to arrange the details of the sale and the mode of payment by the purchasing company, and was instructed to make an arrangement with some trust company to receive the bonds and stock of the parties assenting and issue certificates therefor, setting forth what the holder thereof was entitled to receive. This agreement was carried out, and the property sold under foreclosure to a new company organized for the purpose, which subsequently was consolidated with the purchasing company under the name of the Chicago, Rock Island and Pacific Railroad Company. The amount payable to the stockholders was not, however, distributed, and creditors of the Mississippi and Missouri Company filed their bills against the new company for the purpose of subjecting the fund to payment of their debts. The court laid down the rules which have just been stated, and held that they

Points.

Fourth. The property is subject in equity to appellee's claim.

applied to this case, and that the result was that the agreement that the bondholders should receive part of their debt in satisfaction, while a part of the proceeds should go to the stockholders, was fraudulent as against general creditors not secured by the mortgage, and this, although the road was mortgaged far above its value and on a sale in open market did not bring nearly enough to pay even the mortgage debts, so that in fact if there had been an ordinary foreclosure and one independent of all arrangement between the mortgagees and the stockholders the whole of the proceeds of sale would have gone to the mortgagees.

It will be seen that this case was precisely parallel to the present. For here the parties in interest first entered into a preliminary agreement regarding the disposition of the property among themselves which secured to the stockholders very considerable rights therein, some upon condition of paying assessments, but the majority without any such payment, and then the foreclosure followed merely as an incident of this arrangement and the creditors remain unpaid. There is, therefore, no difference between these facts and those in the Howard case.

In *Chicago Ry. Co. vs. Third National Bank*, 134 U. S., 276, a corporation leased its property leaving debts unpaid. It appeared that the lessee received the property subject to a lien of \$1,100,000 and put a lien upon it from which \$3,000,000 were realized. It was held that a corporation in debt could not transfer its entire property by lease so as to prevent its application at full value to the satisfaction of the debts of the company, and the court decreed payment of the lessor's debts by the lessee.

In *Angle vs. Chicago Ry. Co.*, 151 U. S., 1, it was held that a single stockholder in a corporation could not secure a transfer to himself of all the property of a corporation so as to defeat its debts, even by a statute.

In *Farmers' Loan and Trust Co. vs. Missouri Ry. Co.*, 21 Fed. Rep., 264, the bondholders obtained a decree to foreclosing a mortgage upon the property of the Missouri Company, but instead of making a sale of its property entered into an arrangement among themselves, with the consent of all parties to the suit, by which the entire property was transferred by perpetual lease to another company which stipulated to pay to a receiver provided for in the order of the court made under such arrangement, as rental, thirty per cent of the gross earnings of the road which might accrue from the lessee's operation thereof. This was to be applied by

Points.

Fourth. The property is subject in equity to appellee's claim.

the receiver in payment of interest on the bonds issued by the lessee company and accepted in lieu of the bonds of the lessor and secured by mortgage upon the whole property of the lessor company; any surplus was to be paid to the lessor company. There was thus no provision made for payment of the floating debt of the insolvent corporation. The holders of certain unsecured notes given in liquidation of the debts growing out of the construction of a part of the insolvent road, intervened after the foreclosure decree, and prayed to have their debts established as equitable liens upon the property and funds of the insolvent road paramount to the lien of the mortgage. It was held that they were entitled to the relief prayed.

In *Chattanooga Co. vs. Evans*, 66 Fed. Rep., 809, it was held that an arrangement entered into whereby the property of an insolvent railroad company was sold and the proceeds distributed among the stockholders was fraudulent and void as against unsecured creditors, and that the property could be followed by such creditors into the hands of a purchaser with notice.

So, too, in the following cases it is held that equity will not permit the shareholders of a corporation to form a new corporation and transfer the assets to it without paying the debts of the former corporation: *Hibernia Insurance Co. vs. St. Louis Co.*, 13 Fed. Rep., 516; *McVicker vs. American Opera Co.*, 40 Fed. Rep., 861; *Abbot vs. American Hard Rubber Co.*, 33 Barb., 578; *affd.*, 11 Abb. Pr., 204; *Cole vs. Millerton Iron Co.*, 133 N. Y., 164; *Skinner vs. Smith*, 134 N. Y., 240; *People vs. Ballard*, 134 N. Y., 269; *Vance vs. Coal Co.*, 92 Tenn., 47; *San Francisco Co. vs. Bee*, 48 Cal., 398. Even a majority of stockholders have no right to transfer the property in disregard of the rights of the minority (*Ervin vs. Oregon Co.*, 20 Fed. Rep., 577; 27 *Id.*, 625), although it be done by legal proceedings (*Farmers L. & T. Co. vs. N. Y. & Northern Co.*, 150 N. Y., 410).

As against these well-settled principles, some reliance is had on *Paton vs. Northern Pacific Co.*, 85 Fed. Rep., 838, but the court expressly distinguished that case from the Howard case upon the ground that the reorganization agreement did not precede, but followed, the foreclosure, and that the only value of the common stock of the new company arose from the assessment paid. These circumstances distinguish it also from the present case.

It is clear, therefore, that this plan to continue to the stock-

Points.

Fourth. The property is subject in equity to appellee's claim.

holders of the Richmond and Danville Company an interest in this property without paying the debts of the latter company is ineffectual as to its creditors, and that the property is subject to their rights. This court of equity, having control of the property, will order payment of such claims by the organized stockholders of the former company who are the real purchasers, and present owners of the property under the name of the Southern Railway Company.

Points.**FIFTH.****Interest was properly allowed upon the claim of the appellee.**

The general rule is, of course, that in the case of a contract liability, the creditor is entitled to interest from the time when the same becomes due.

The appellant, however, claims that this rule has no application to the present case, and in behalf of its contention cites *Thomas vs. Western Car Company*, 149 U. S., 95, 116. This authority has no present application. The question there was not regarding diversion of the earnings of the property, but whether interest should be allowed out of the *corpus* of the mortgaged premises. The court held that under the circumstances of the case it should not, inasmuch as those proceeds were far less than sufficient to pay the mortgage debt. It stated the rule that after property of an insolvent passes into the hands of a receiver or assignee in bankruptcy interest is not allowed on claims against the fund.

But this, of course, applies merely to the distribution of a fund among creditors of equal rank and equally entitled to share therein, and perhaps applies to its full extent only where the fund is insufficient to pay such claims in full with interest. If the fund is sufficient to pay interest, the creditors are entitled thereto, and any creditor having a superior equity is entitled to interest prior to any payment to the parties next in rank (*National Bank of the Commonwealth vs. Mechanics' Bank*, 94 U. S., 437, 441; *Richmond vs. Irons*, 121 U. S., 27, 64; *Nashua & Lowell Co. vs. Boston & Lowell Co.*, 61 Fed. Rep., 237, 246-252). In *New England Railway Company vs. Carnegie Steel Company*, 75 Fed. Rep., 54, the court said that if the petitioner had shown that there was a fund in the hands of the receivers or their privies especially applicable to the payment of petitioner's claim, which would not have been exhausted by the allowance of interest, the interest might perhaps have been computed. This is precisely what the court below in the present case has found to be the fact.

The earnings diverted for the benefit of the mortgage bondholders were ample to pay the petitioner's claim with interest.

Points.

Conclusion. The decree should be affirmed.

There is, therefore, no reason why such interest should not be paid in accordance with the general rules upon the subject.

CONCLUSION.**The decree should be affirmed.**

The appellee not only has an equitable lien upon the property in the hands of the appellant and a statutory lien thereon prior to the consolidated mortgage; in addition, the income was largely diverted from payment of current expenses for the benefit of the bondholders. Under well settled rules, the appellee is, therefore, entitled to payment.

P. C. KNOX,
DAVID WILLCOX,
Of Counsel for Appellee.

10-28-8
Brief of Counsel for Appellees
October 28, 1893

Supreme Court of the United States

THE SOUTHERN RAILWAY CO.
PURCHASER, Appellant

THE CARROLL STEEL CO.
Appellee

FILE NO.
October Term,
1893

BRIEF OF APPELLEE

NICHOLAS F. BOED

By Counsel for Appellee

Supreme Court of the United States.

THE SOUTHERN RAILWAY CO.,
PURCHASER, *Appellant*,

vs.

THE CARNEGIE STEEL CO.,
LIMITED, *Appellee*.

No. 39,
October Term,
1898.

BRIEF OF APPELLEE.

STATEMENT OF FACTS.

On the 10th day of June, 1891, the Carnegie Steel Company made a contract with the Richmond and Danville Railroad Company for the delivery of certain steel rails, by the terms of which it was provided that certain rails therein mentioned were to be delivered by the Carnegie Steel Company on board cars at Bessemer, Pennsylvania, at thirty dollars per gross ton, for which the railroad company was to pay in its notes at four months from the date of shipment, without interest, with privilege of renewal of such notes for three months, with interest on the renewal at the rate of five per cent. per annum, and with the further privilege of a second renewal for three months, with interest at six per cent. per annum. By the terms of the contract it was further guaranteed by the Carnegie Steel Company that the freight on the rails to Strasburg, Virginia, should not exceed \$1.75 per gross ton, if the rails were consigned to Lynchburg, Virginia. The rails called for by the contract were all delivered between the 25th day of July, 1891,

and the 10th day of October of the same year, and the promissory notes of the Richmond and Danville Railroad Company given therefor, which notes were subsequently renewed, and by their terms did not mature until after the date of the appointment of a Receiver in this cause, at the suit of Clyde and others against the Richmond and Danville Railroad Company. There still remains due on account of such rails to the Carnegie Steel Company the sum of one hundred and twenty-five thousand and sixty-seven 39-100 dollars, with interest thereon. By the Master's Account filed in this cause the claim was allowed a priority over certain of the bonds secured by the mortgage foreclosed by the decree of this Court, and declared not to be prior to the remainder of the bonds. To this report exceptions were filed by the Trustee of the mortgage, on the ground that the claim had no legal priority whatsoever; and by the claimants on the ground that it should have been allowed an equitable priority over all the bonds.

The Court below sustained the appellee's exception to the Master's Report and account, and overruled the exception filed by the Trustee, and entered a decree for the payment of the claim. From that decree this appeal is taken.

POINTS OF LAW.

The appellee will contend that its claim was properly allowed an equitable priority on three separate and distinct grounds:

First. For the reason that there has been a diversion of earnings so as to bring the claim within the doctrine laid down in the case of *Fosdick vs. Schall*, and the other cases following and supporting that doctrine.

Second. Because, independent of the doctrine of *Fosdick vs. Schall*, and other similar cases, there was a fund in the hands of the Receivers appointed in the case of Clyde against the Richmond and Danville Railroad Company, which fund belonged to the floating debt creditors, and

which was either turned over to or used for the mortgage bondholders, and which they should, therefore, be compelled to restore; and

Third. Because the claimant is entitled to a priority under the Virginia Statutes, as construed by this Court in the case of *Newgass*, which was the ground taken by the Masters in this case in making their report.

We shall consider these points in the above order :

FIRST POINT.

The doctrine announced by the Supreme Court in the case of *Fosdick vs. Schall*, and confirmed by it in a number of subsequent cases, is too familiar to require a very extensive statement. The Court in that case, after alluding to the fact that the business of all railroad companies is done to a greater or less extent on credit, which credit is longer or shorter, as the necessities of the case require, went on to say that every railroad mortgagee, in accepting his security, impliedly agrees that the current debts made in the ordinary course of business shall be paid from the current receipts before he has any claim on the income. If, for the convenience of the moment, something is taken from what may not improperly be called the current debt fund, it is not inequitable to require the mortgagee creditor to pay that sum back, and if the appointment of a Receiver has been ordered, such a restoration will be directed from the current receipts under the Receivership before anything from that source goes to the mortgagees. In this way, as the Supreme Court said;—the Court will only be doing what, if a Receiver should not be appointed, the company ought to do itself. The Court further went on to say:—that while ordinarily this power is confined to the appropriation of the income of the Receivership and the proceeds of moneyed assets, cases may arise where equity will require the use of the proceeds of a sale of the mortgage property in the same way, and the Court gives as an illustration of such a case

where, in the course of the administration of the case, the Court was called upon to take income which would otherwise be applied to the payment of old debts for current expenses and uses it to make permanent improvements on the fixed property, or to buy additional equipment, or otherwise to increase the value of the mortgaged property.

Again, in the case of *Burnham vs. Bowen*, the Supreme Court, after quoting the doctrine of *Fosdick vs. Schall*, to the effect that a mortgage creditor agrees that the current debts should be paid out of the current receipts before he has any claim on the income, say, that such being "the case when a Court of Chancery, in enforcing the rights of mortgage creditors, takes possession of the mortgaged railroad, and thus deprives the company of the power of disposing of any further earnings, it ought to do what the company would have been bound to do had it remained in possession; that is to say:—pay out of what it receives from earnings, what debts, in equity and good conscience, considering the character of the business, are chargeable upon such earnings." In other words:—"what may properly be termed the debts of the income should be paid from the income before it is applied in any way to the use of the mortgages. The business of a railroad should be treated by a Court of Equity, under such circumstances, as a going concern, not to be embarrassed by any unnecessary interference with the relations of those who are engaged in or affected by it."

We therefore submit that if the claimant in this case would have had a right, if no Receiver had been appointed in the case of Clyde against the Richmond and Danville Railroad Company, to have had the current receipts of that company applied to the payment of his debt, the claimant had a right to have earnings of the receivership so applied. In other words:—whatever the company itself was bound in equity and good conscience to do, the Receivers were also bound in equity and good conscience to do. A Court

of Equity does not appoint a Receiver to perpetrate an injustice, but for the purpose of carrying out and performing the legal and equitable obligations of the company so far as may be. Or, to use the language of the Supreme Court in the case of *Burnham vs. Bowen*: "So far as current expense creditors are concerned, the Court should use the income of the receivership in the way the company would have been bound in equity and good conscience to use it if no change in the possession had been made." This branch of the case, therefore, resolves itself into a determination of these questions:

1. Would this claimant have been entitled, if a Receiver had not been appointed, to have had the current income applied to the payment of its claim as a current supply debt?

2. Did a fund, which the company, if it had remained in possession of the property would have been bound to apply, go into the hands of the Receivers?

3. Was such a fund so in the hands of the Receivers used for the benefit of the mortgage bondholders?

The first point we think clear. There can be no question that the claimant was a supply creditor of the Richmond and Danville Railroad Company. It is true that it gave the company credit for a considerable time by taking its notes and agreeing to an extension and renewal thereof, but it is evident from the case of *Burnham and Bowen*, above referred to, that the taking of notes and the renewal of the same does not prevent the creditor from being considered a supply creditor or from being entitled to look to the current receipts for payment when his notes mature. In that case it is stated in the opinion of the Court: "When the Receiver was appointed, the debt was evidenced by business paper maturing at a future date. It was no waiver of any claim on the fund which came into the hands of the Receiver to renew the paper at maturity for the convenience of the holder."

The case of *Bound* against the South Carolina Railroad Company has been considered opposed to this view, but the only thing decided by that case was, that during the period of the running of such notes the claimant must be considered as waiving his claim against the current income, and that, there, no use of the current income for the benefit of the mortgage bondholders during the running of the note can be considered a diversion. We therefore submit, on the authority of Burnham and Bowen, that at the maturity of the notes taken by the claimants in this case they would have been entitled to have had them paid as a supply debt out of the current receipts of the Richmond and Danville Railroad Company, if no Receiver had been appointed.

The second point—as to whether there was income in the hands of the Receivers with which to pay this claim, if it had not been diverted—we think equally clear. It appears from the report of F. W. Huidekoper and Reuben Foster, Receivers, of their operations of the Richmond and Danville Railroad System from June 17, 1892 to July 31, 1893, at which date they were discharged, that the gross earnings amounted to \$11,669,789.50, and the operating expenses, including taxes, amounted to \$8,371,997.19, leaving net earnings of \$3,297,792.31. Of this amount they expended \$559,734.62 in what they call extraordinary expenditures against net earnings. They paid for construction on the Richmond and Danville Railroad Company \$19,717.05; for construction work on lines held by the Richmond and Danville Railroad Company, subject to the payment of a fixed amount of rental, the sum of \$88,416.10, and construction on other leased lines the sum of \$124,001.19, making a total for construction work of \$232,134.34. They expended in buying equipment for the Richmond and Danville Railroad Company \$74,733.28, and in equipment for the leased lines \$6,657.04, making a total for equipment purchased of \$81,390.32. The balance of the sum of \$590,000.00 above mentioned as devoted to extraordinary expenditures made out of the net earnings was used in paying expenses

incurred prior to the appointment of the Receivers, (\$185,562.13,) payment of judgments against leased lines (\$9,565.39,) and Court expenses (\$51,082.44.) After the payment of the above extraordinary expenditures out of the net earnings they had what they called available net of \$2,738,057.69. This available net was more than exhausted by the payment of interest, rentals and dividends of over \$3,000,000, of which sum \$396,522.14 was paid on securities issued by the Richmond and Danville Railroad Company prior in lien to the mortgage foreclosed by the decree in this case, and the balance for interest and dividends on the securities issued by the leased lines or for rentals of the same. It also appears, however, that during this same period the Receivers paid, in addition to the above, the sum of \$486,368.16 in Car Trust payments and sinking fund, of which sum \$67,205 was paid on account of the sinking fund of the Richmond and Danville five per cent. equipment mortgage, and \$209,500 on account of Car Trust payments. (See Record, page 422.)

It also appears from the cash account filed by the Receivers that they received from the Richmond and Danville Railroad Company at the time of their appointment \$480,427.91 in cash, and that they received in settlement of accounts due the Richmond and Danville Railroad Company prior to their appointment \$671,363.40. That is to say, they received of the net earnings made prior to their appointment by the Richmond and Danville Railroad Company a total amount of \$1,151,791.31, and that they turned over to the Receivers appointed on the application of the mortgage bondholders on the 1st day of August, 1893, the sum of \$141,325.19, being the balance of cash on hand. (Record, page 424.)

We submit that the above figures, taken from the report of the Receivers filed in this cause, clearly show the receipt of net earnings which the defendant railroad company would have been bound to apply to the payment of this

claimant's account if it had remained in control of its property.

As to the third point—that is to say, whether or not these earnings were applied for the benefit of the mortgagees—we consider the matter equally clear. It surely cannot be denied that the item of \$19,000 for extraordinary construction on the Richmond and Danville Railroad Company was an expenditure which enhanced the value of the mortgaged property afterwards sold under foreclosure. As to the items of \$88,000.00 and \$124,000.00 for extraordinary expenditures in construction work on the leased lines, it is to be observed that the mortgaged foreclosed in this suit was mainly to secure bonds which were to be issued by the Trustee upon deposit with such Trustee of mortgage bonds covering the leased lines of the Richmond and Danville Railroad Company, and that, as appears from the bill of complaint of the Central Trust Company, and from the decree of foreclosure, a large amount of these bonds were so deposited, and the bonds of the mortgage foreclosed in this case issued against them, and the leasehold interest held by the Danville Company in these lines assigned to the mortgagee. By the decree of the foreclosure it was adjudged that not only should the line of the Richmond and Danville Railroad Company proper be sold, but the leasehold interest in the leased lines, and the bonds on the same deposited with the Trustee under the mortgage. Construction work, therefore, done on the leased lines afterwards sold by the decree of foreclosure, operated directly to the benefit of the mortgaged property, and the income was applied to the use of the mortgagees in improving the property in which they had a leasehold interest conveyed to them by way of mortgage or a mortgage interest secured by bonds deposited with their Trustee as collateral. Again, the purchase of equipment for the Richmond and Danville Railroad Company to the amount of \$74,000.00 set forth as an extraordinary expenditure against the net earnings was surely an application of the income for the use of the

mortgagees, as the equipment so purchased was, of course, sold at foreclosure of their mortgage. The interest, rentals and dividends paid on the leased lines covered by the mortgage was also an application of the net earnings of the company in the hands of the Receiver for the purpose of preserving and retaining the title to the property afterwards sold for the benefit of the mortgagees, and the Car Trust payments and the payments on account of the Sinking Fund for the Richmond and Danville Equipment Mortgage were, in fact, payments on account of the purchase of rolling stock covered by the mortgage foreclosed in this case and sold under the decree for the benefit of the mortgagees. All of these payments, therefore, were, in fact, applications of the income in the hands of the Receivers for the benefit of the mortgagees, and if the claimant in this case was entitled to have income in the hands of the Receivers applied to its claim before the same was used for the benefit of the mortgagees, we respectfully submit that we have shown such a diversion of the income as entitles us to have it restored out of the proceeds of sale.

SECOND POINT.

Aside, however, altogether from the doctrine of Fosdick and Schall, and the equity priority therein declared in favor of supply creditors, the claimant in this cause respectfully submits that it is entitled to be paid its claim in full. We do not understand that there is any dispute over the legal proposition that the net earnings in the hands of the Receivers appointed under a creditor's bill belong to the creditors-at-large, and not to the mortgagee. In other words, it is immaterial whether the mortgage covers the tolls and incomes or not, so long as they are not impounded and taken possession of by the Trustee under the mortgage or by a Receiver appointed at the instance of the Trustee or the bondholders.

Sage vs. The Memphis, &c., R. R., 125 U. S.
378.

Kneeland vs. The American Loan Co., 106 U. S. 103,

Gilman vs. The Telegraph Co., 91 U. S. 617.

The original bill filed in this cause was filed by William P. Clyde, John C. Mabin and William H. Goadby against the Richmond and Danville Railroad Company and the Richmond and West Point Terminal Railway and Warehouse Company. The plaintiffs alleged that they were creditors and stockholders of both the Danville and Terminal Companies, who sued for themselves and all other creditors and stockholders, and prayed a sequestration of the income of the railroad property and marshaling and ascertainment of the indebtedness and the appointment of a Receiver. As we have said, there can be no question as to the legal proposition that, under such a bill, the net income earned by the Receivers belongs to the creditors of the road generally until such time as the mortgagee demands possession. We have seen, in considering the previous proposition, that the Receivers appointed under the bill of Clyde and others made net earnings, above operating expenses, during their administration of the property of \$3,297,792.31, and we have also seen that they received of the earnings made prior to the receivership the sum of \$1,151,791.31, and that after making sundry payments, a large portion of which were for the direct benefit of the mortgage bondholders, and a portion directly to the mortgage bondholders by way of interest, they turned over on August 1st, 1893, to the Receivers appointed at that date under the bill filed by the Central Trust Company, Trustee under the mortgage afterwards foreclosed, a balance of cash on hand of \$141,325.19. Without going over again the separate items of expenditures already considered, we submit that it clearly appears that the Court from time to time directed, or that the Receivers considered it their duty, without special direction of the Court, to make expenditures by way of betterments on the property and the purchase of equipment for

the better operation of the property, all of which expenditures were made out of money in the hands of the Receivers which belonged to the general creditors of the company, and that the property enhanced in value by such betterments, and the equipment so purchased was afterwards, by the decree of this Court, sold for the benefit of the mortgage creditors. It seems to us that, under such circumstances, it hardly needs argument to show that a Court of Equity, having had in its hands funds which belong to one set of creditors, and having used these funds for the benefit of another set of creditors, will repay to the first set of creditors what it so used out of funds in its hands belonging to the second set. The objection which is urged against this proposition is to the effect that the claimant in this cause and other creditors made no objection to such uses of the money at the time it was ordered, and that the Trustee and the mortgage bondholders, not being then parties to the case, were not responsible for the use so made. We submit that this is hardly a valid objection. It was doubtless wise in the Court and the Receivers managing the property of the defendant railroad company to do the construction work set forth in the Receivers' report and purchase the additional equipment, to pay off the Car Trust as it came due, and otherwise preserve the property for the general benefit, and no objection could successfully have been urged to such a course at the time the orders were made. As the Supreme Court said in the case of *Barton vs. Baker*, 104 U. S., a railroad is authorized to be constructed more for the public good to be subserved than for private gain. It is, therefore a matter of public right, when the Courts take possession of the property through a Receiver or other officer in whose charge it is placed, to continue the ordinary operations of the corporation, to run trains of cars, to keep the tracks, bridges and other property in repair, and generally to make such improvement and acquire such equipment and may be necessary for the public good and convenience, and we do not doubt that the purchase of equip-

ment and the construction work done on the line of the road was with a view to securing the public purposes suggested above; but when the Court has arrived at the end of its administration of the property and finds that, in enabling its Receivers to perform the duties owed by the corporation to the public, it has used the money of one set of creditors for the benefit of another, can there be any doubt of the Court's power and duty to restore the money so used?

Still stronger is the claim on the fund of \$141,000 turned over by the Receivers appointed under the creditors' bill to the Receivers appointed at the suit of the mortgage bondholders. It was a fund unexpended by the Receivers appointed at the suit of the creditors in their hands at the time the property was taken possession of by the mortgage bondholders and the income thereafter impounded for their benefit. To this amount they were clearly in no wise entitled, it having been earned during the prior receivership.

THIRD POINT.

The third point upon which the claimant relies in this cause is the point decided in its favor by the Masters. By Sec. 2485 of the Code of Virginia, in full force and effect at the time of making of the contract with this claimant, and at the time of its furnishing the rails therein mentioned, it was provided that all persons furnishing railroad iron, cars, fuel and all other supplies should have a prior lien upon all the franchises, gross earnings, real and personal property of the railroad corporation to which said supplies were furnished to the extent of the money due for such supplies, and that no mortgage executed since the date of the original passage of that Statute should have the effect to defeat or take precedence of such lien.

This statute, as originally passed in 1877, was held to be defective because of a failure to comply with the Constitution of Virginia in expressing the object of the Statute in its detail; but, however that may be, it was re-enacted in the Code of Virginia which went into effect on the 1st day

of May, 1888, and from and after that date it is admittedly a valid and effectual statute.

As we have seen, the contract for the furnishing of the steel rails in this case was made on the 10th day of June, 1891, and the rails were furnished between that date and the 10th day of October following. It therefore appears that at the time of furnishing the material the claimant in this cause was protected by the Statute and given a prior lien. Section 2486 of the Code went on to provide, however, that, in order to entitle a supply creditor to the lien under the previous section of the statute, he must, within six months after the claim became due, file a memorandum of the amount and consideration thereof in the clerk's office of the county Court, or, if the principal office of the corporation is located in the city of Richmond, in the Chancery Court in that city. Two objections are taken by the trustee for the bondholders in this cause to the lien of the claimants' claim as a priority over the mortgage bonds. The first is that the mortgage foreclosed in this cause, having been made and recorded prior to May, 1888, the statute then passed, by the passage of the Code, could not operate to give any supply creditor a prior lien over that mortgage. In the second place, inasmuch as it does not appear that the claimant ever filed a sworn memorandum of the amount and consideration of its claim in the Chancery Court of Richmond, it is not a valid claim within the language of the statute. The claimant submits that both of these points have been affirmatively and positively decided by this Court in construing this very statute. In the case of *Newgass vs. The Atlantic and Danville Railroad Company*, 56 Fed. Rep. 683, this Court held that a supply creditor had a prior lien over bonds issued subsequent to May 1, 1888, although the mortgage securing such bonds had been recorded prior to that date, holding, in substance, that persons taking bonds after the passage of that Statute secured by a blanket mortgage such as the one foreclosed in this cause, take them with notice that they are subject

to the prior equities of materialmen and others. In the case at bar it is admitted by a stipulation filed in the case that out of the \$4,527,000 of bonds issued under the mortgage foreclosed in this cause, \$2,906,000 were issued subsequent to May 1, 1888. We submit, with confidence on the authority of Newgass against the Railroad Company, above cited, that this claimant is entitled to a priority over \$2,906,000 of said bonds. The other objection, that the claimant did not file in the clerk's office in the Chancery Court of Richmond a memorandum of the amount and consideration of its claim, we think to be equally clearly decided by the case of Newgass above referred to, and also by the case of the Seventh National Bank vs. The Shenandoah Iron Company, 35 Fed. Rep. 443, in which last case this Court, in construing identically the same section of the statute, held that the requirement of the statute to file a memorandum of claim in order to effect a lien within six months after the claim became due, was suspended by the taking possession of the bankrupt's property by the Court and the appointment of the Master, with directions to state an account showing all claims. That it is evident that this must be so appears from a very slight consideration of the circumstances of this case. The claims in this case did not come due until some time after the appointment of the Receivers. As decided in the case of Newgass above referred to, the six months within which the claim must be filed does not commence to run until the last payment agreed to be made comes due, according to the terms of the contract. In the case at bar, as we have said, before the claim became due at all, Receivers were appointed to this Court which took possession of all the property of the debtor, and Masters were appointed who were directed to state an account and report to the Court all indebtedness of the defendant company, and the various priorities existing at the date of the appointment of the Receiver and the impounding of the defendant's property by the Court for the benefit of the creditors. The Masters were also ordered to

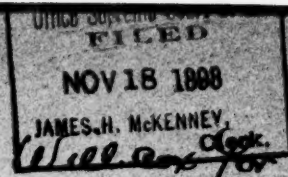
give notice, by advertising, for all creditors to file their claims with them, and were directed to report their findings to the Court within a certain limited time. The six months within which this claimant was required to file the memorandum, under affidavit, of its claim in the State Court, extended considerably beyond the time within which the creditors were required, by the terms of the order of this Court, to file their claim with the Master, and also beyond the time within which the Masters were required to report their findings to this Court. The claimant in this cause did file with the Masters a statement, under affidavit, showing the amount and consideration of its claim, and it seems to us apparent, under circumstances like these, that a statute requiring the claim to be filed within six months after it becomes due, must necessarily be inoperative, more particularly when such a statute require that we file in another Court for the purpose of giving notice to parties, all of whom are in the Court having jurisdiction of the property, and engaged in stating an account of indebtedness.

We have paid no attention to the argument based on the amendment to the section of the Virginia Statute above referred to, which was passed on the 15th day of February, 1892, for the reason that our lien, having accrued under that statute in force at the date at which we supplied the material, was in no manner affected by that statute, which amended the prior statute by providing that the claim should be filed within 90 days after furnishing the material, instead of within six months after the claim should become due. It is apparent that that amendment could not have been intended to affect materialmen furnishing supplies more than 90 days before the amendment was passed, as, to give it such an effect, would be to deprive him altogether of his lien, which the Legislature evidently did not intend, and could not, if it did so intend, validly carry into effect.

The appellee therefore submits that on all the grounds above noted it has a valid claim to priority of payment, and that the decree below should be affirmed.

NICHOLAS P. BOND,

Of Counsel, for Appellee.



Supreme Court of the United States.

Filed Nov. 18, 1898.

October Term, 1898.—No. 39.

Certiorari to the Circuit Court of Appeals for the
Fourth Circuit.

THE SOUTHERN RAILWAY COMPANY,

Appellant,
against

THE CARNEGIE STEEL COMPANY,
LIMITED,

Appellee.

NOVEMBER, 1898.

Brief,

For Appellee in Reply to Appellant's Supplemental Brief.

P. C. KNOX,

DAVID WILLCOX,

Of Counsel for Appellee.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1898. No. 39.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH
CIRCUIT.

THE SOUTHERN RAILWAY COMPANY,
Appellant,

AGAINST

THE CARNEGIE STEEL COMPANY, LIMITED,
Appellee.

November, 1898.

BRIEF,

for Appellee in reply to Appellant's Supplemental
Brief.

As a matter of convenience it seems well to restate here the facts regarding the results of the operation of the property held by the receivers, and the diversion of the income from payment of current indebtedness of the company.

1. Receipts and expenditures upon the entire system.

(a) Insolvency receivers from June 17, 1892, to July 31, 1893 (p. 422) :

Received from net earnings..... \$3,297,792 31

Expended as against the same :

Car-trust payments..... \$209,500 00

Sinking-fund payments..... 67,205 00

Interest and Rentals 3,249,481 89

Construction 232,134 34

Equipment..... 81,390 32

————— \$3,839,711 55

Statement.

(b) Foreclosure receivers from August 1, 1893, to December 31, 1893 (p. 423) :

Received from net earnings.....\$1,127,861 09
Expended as against the same :

Car-trust payments.....	51,160 00
Sinking-fund payments.....	37,790 00
Interest and Rentals.....	626,735 85
Construction and Equipment....	43,629 89
	<hr/> \$759,315 74

(c) Both receiverships combined, from June 16, 1892, to December 31, 1893 :

Received from net earnings.....4,425,653 40
Expended as against the same :

Car-trust payments.....	\$260,660 00
Sinking-fund payments.....	104,995 00
Interest and Rentals.....	3,876,217 74
Construction and Equipment....	357,154 55
	<hr/> 4,599,027 29

2. Receipts and expenditures upon the Richmond and Danville road, taken alone and also with the "fixed leases."

Net earnings of insolvency receivers, from June 16, 1892, to August 1, 1893 (p. 402).....346,163 10

The earnings during the foreclosure receivership from the Richmond and Danville road are not separately stated, but at the same rate the earnings of both receiverships solely from the Richmond and Danville road were, approximately.....550,000 00

Expended as against earnings upon the Richmond and Danville road proper (pp. 422, 423) :

Construction—

Insolvency receivers.....	\$19,717 05
Foreclosure receivers.....	9,232 61
	<hr/> 28,949 66

Equipment—

Insolvency receivers.....	74,733 28
Foreclosure receivers.....	6,791 35
	<hr/> 81,524 63

Statement.

Car-trust payments—

Insolvency receivers	209,500 00	
Foreclosure receivers	51,160 00	
		260,660 00

Total expended out of earnings upon the Richmond and Danville proper to increase the mortgage security..... \$371,134 29

In addition, the consolidated mortgage covered certain leaseholds, which are termed "fixed leases" (p. 402); with two unimportant exceptions, these were included in the decree of foreclosure (pp. 265-268). The receivers expended upon them the following further sums:

Construction—

Insolvency receivers	\$88,416 10	
Foreclosure receivers	8,874 40	
		97,290 50

This shows that out of the earnings between June 16, 1892, and December 31, 1893, there were expended for *construction and equipment* and *car-trust payments* upon the identical premises described in the consolidated mortgage..... \$468,424 79

None of this was for rails purchased from the appellee, because no such rails were purchased by the receivers until after December 31, 1893 (p. 245).

3. Floating debt of the Richmond and Danville Company now remaining unpaid (pp. 395, 398):

Total debt remaining unpaid		\$318,324 71
Deduct Pullman Co. for car mileage	\$90,752 81	
Western Union Co. for constructing telegraph lines	22,186 53	
		112,939 34

Claims for materials and supplies remaining unpaid \$205,385 37 consisting of:

Carnegie Co. for rails	\$125,067 39
All others	80,317 98

This shows that the income, not only of the insolvency receivership, but also of the foreclosure receivership, was expended upon

First. Appellee's claim as a supply creditor is free from objection.

the property in order to hold it together for the bondholders, while these obligations for materials and supplies were allowed to remain unpaid.

FIRST.

The diversion of current earnings has been fully established.

The Supplemental Brief denies the statement that the car-trust and rental payments were "made for the purpose of keeping the property together for the benefit of the bondholders." The facts upon the subject are stated in detail on pages 29 and 30 of the Principal Brief for the Appellee. At the beginning of the proceedings on June 15, 1892, that was stated in the Clyde bill as the object of the suit (pp. 14-16). Upon June 28, 1892, in the petition for leave to issue receivers' certificates, it was said that the object was to "preserve the system of roads against dismemberment * * "as well as to preserve and increase the present market value of the "bonds and stocks belonging to the receivership" (p. 26). On this petition and notice to the trustee under the consolidated mortgage, an order was made authorizing the receivers to apply the income coming into their hands to payment of car trusts and rentals (pp. 25, 137). The accounts of the receivers, as above stated, show that this application of the income was made during the eighteen months of the two receiverships to the extent of \$4,136,877.74. The reorganization agreement of May 1, 1893, stated that this had been done because it was "sought to hold together the various "properties embraced in the system," (p. 512) and in so doing the "receivers had become so depleted of cash" that they had been obliged to default upon obligations prior to the consolidated mortgage (p. 533, note †). This establishes that the intention was to hold the property together for the benefit of the bondholders, and that the income of the receivership was expended for that purpose.

Exhibit B, p. 431, to which the Supplemental Brief refers, shows that between August 1 and November 30, 1893, the foreclosure receivers paid rentals on ten leased roads. Accordingly, in the foreclosure

First. Diversion of earnings has been fully established.

decree eight of the principal leaseholds were decreed to be sold (pp. 264-268), and they were bought in by the reorganization committee and conveyed to this appellant (pp. 295, 296). This makes it clear that the property was in fact held together for the benefit of the bondholders by this expenditure of the income of the receivership. Indeed, the Supplemental Brief itself states (p. 4) that some of the leaseholds "were indispensable to any profitable working of the "Richmond and Danville Railroad."

But, as appears above (*supra*, pp. 1-3), the diversion did not consist merely in Interest and Car Trust payments. During the insolvency receivership there was expended for Construction and Equipment the sum of \$313,524.66 and during the foreclosure receivership for the same purposes the sum of \$43,629.89. In *Burnham vs. Bowen*, 111 U. S., 776, expenditures of exactly the same character were made by a receiver. It was held that this constituted diversion and that a creditor of the company who had taken its acceptances, and even renewed them after the receiver was appointed, was entitled to payment prior to the bondholders.

The Supplemental Brief vigorously claims that the consolidated mortgage bondholders were not chargeable with anything done in the Clyde suit. Under date of June 28, 1892, the complainants in that case petitioned for an order allowing the receivers to divert the income from payment of current expenses. An order to that effect was made upon the following day after hearing counsel for the Central Trust Company, the trustee under the consolidated mortgage (p. 135). The fact that counsel attended upon one day's notice and made no opposition, indicates that the order was made with the co-operation of the Trust Company.

Importance is attached to the fact that when the Central Trust Company was granted leave to formally intervene in the insolvency suit, its petition did not set forth that it was trustee under the consolidated mortgage. But that is a matter of very little consequence. As just shown, the Trust Company, upon June 28, 1892, had co-operated in the order authorizing the receivers to divert the income to payment of rentals and car trusts (pp. 28, 135, 167, 168). Upon July 13, 1892, the Trust Company filed a petition praying to be allowed to intervene (pp. 138-141). It is true that this did not enumerate the many mortgages under which the Trust

First. Appellee's claim as a supply creditor is free from objection.

the property in order to hold it together for the bondholders, while these obligations for materials and supplies were allowed to remain unpaid.

FIRST.

The diversion of current earnings has been fully established.

The Supplemental Brief denies the statement that the car-trust and rental payments were "made for the purpose of keeping "the property together for the benefit of the bondholders." The facts upon the subject are stated in detail on pages 29 and 30 of the Principal Brief for the Appellee. At the beginning of the proceedings on June 15, 1892, that was stated in the Clyde bill as the object of the suit (pp. 14-16). Upon June 28, 1892, in the petition for leave to issue receivers' certificates, it was said that the object was to "preserve the system of roads against dismemberment * * "as well as to preserve and increase the present market value of the "bonds and stocks belonging to the receivership" (p. 26). On this petition and notice to the trustee under the consolidated mortgage, an order was made authorizing the receivers to apply the income coming into their hands to payment of car trusts and rentals (pp. 25, 137). The accounts of the receivers, as above stated, show that this application of the income was made during the eighteen months of the two receiverships to the extent of \$4,136,877.74. The reorganization agreement of May 1, 1893, stated that this had been done because it was "sought to hold together the various "properties embraced in the system," (p. 512) and in so doing the "receivers had become so depleted of cash" that they had been obliged to default upon obligations prior to the consolidated mortgage (p. 533, note †). This establishes that the intention was to hold the property together for the benefit of the bondholders, and that the income of the receivership was expended for that purpose.

Exhibit B, p. 431, to which the Supplemental Brief refers, shows that between August 1 and November 30, 1893, the foreclosure receivers paid rentals on ten leased roads. Accordingly, in the foreclosure

First. Diversion of earnings has been fully established.

decree eight of the principal leaseholds were decreed to be sold (pp. 264-268), and they were bought in by the reorganization committee and conveyed to this appellant (pp. 295, 296). This makes it clear that the property was in fact held together for the benefit of the bondholders by this expenditure of the income of the receivership. Indeed, the Supplemental Brief itself states (p. 4) that some of the leaseholds "were indispensable to any profitable working of the "Richmond and Danville Railroad."

But, as appears above (*supra*, pp. 1-3), the diversion did not consist merely in Interest and Car Trust payments. During the insolvency receivership there was expended for Construction and Equipment the sum of \$313,524.66 and during the foreclosure receivership for the same purposes the sum of \$43,629.89. In *Burnham vs. Bowen*, 111 U. S., 776, expenditures of exactly the same character were made by a receiver. It was held that this constituted diversion and that a creditor of the company who had taken its acceptances, and even renewed them after the receiver was appointed, was entitled to payment prior to the bondholders.

The Supplemental Brief vigorously claims that the consolidated mortgage bondholders were not chargeable with anything done in the Clyde suit. Under date of June 28, 1892, the complainants in that case petitioned for an order allowing the receivers to divert the income from payment of current expenses. An order to that effect was made upon the following day after hearing counsel for the Central Trust Company, the trustee under the consolidated mortgage (p. 135). The fact that counsel attended upon one day's notice and made no opposition, indicates that the order was made with the co-operation of the Trust Company.

Importance is attached to the fact that when the Central Trust Company was granted leave to formally intervene in the insolvency suit, its petition did not set forth that it was trustee under the consolidated mortgage. But that is a matter of very little consequence. As just shown, the Trust Company, upon June 28, 1892, had co-operated in the order authorizing the receivers to divert the income to payment of rentals and car trusts (pp. 28, 135, 167, 168). Upon July 13, 1892, the Trust Company filed a petition praying to be allowed to intervene (pp. 138-141). It is true that this did not enumerate the many mortgages under which the Trust

First. Diversion of earnings has been fully established.

Company was the trustee, and specified merely the first mortgage and the emergency loan. But by a paper dated upon August 10, 1892, the Trust Company, as trustee under the *consolidated* mortgage, requested the court, if it should determine to continue its judicial possession of the property, to appoint Huidekoper and Foster receivers (p. 167). After the date of that request and upon August 16, 1892, an order was entered allowing the Trust Company to intervene generally and not as trustee under any specific mortgage, "on the condition that it hereby submits to the several orders heretofore entered herein" (p. 167). Subsequent orders were regularly made on notice to the Central Trust Company generally (pp. 186, 194, 205, 208, 217).

There is, therefore, no question that the corporation which was trustee under the consolidated mortgage had notice of everything done in the Clyde case, and, whenever it saw fit, acted in behalf of the bondholders secured thereby. The question upon which the Supplemental Brief lays such stress is whether the Trust Company was a party to the suit as trustee of the various mortgages, or only of two of them. This distinction is so minute as to be without importance. But, in any event, it must be deemed settled by the terms of the order which made the Trust Company a party generally without any distinction as to the various mortgages under which, as it had already advised the court, it was trustee. This made it a party for all purposes, and it was in court in behalf of whatever interests it had in the subject matter.

In any event, this point affects nothing save the action of the insolvency receivers. But after the bill was filed to foreclose the *consolidated* mortgage and the receivers were appointed thereunder, with the consent of all parties, an order was entered (p. 245) authorizing them to continue the same course of diverting the earnings, and this they accordingly did. As above stated, between August 1, 1893, and December 31, 1893, the foreclosure receivers paid out for Interest and Rentals, \$626,735.85; for Car Trusts, \$51,160; for Construction and Equipment, \$43,629.89. This diversion was made in the foreclosure suit of the *consolidated* bondholders themselves. There can, therefore, be no question in regard to their acquiescence in it, and the amount was far more than sufficient to pay the appellee. In view of these circumstances, under *Burham vs. Bowen*, 111 U. S., 776, and *Virginia and Ala-*

First. Diversion of earnings has been fully established.

bama Coal Co. vs. Central Railroad Co., 170 U. S., 355, the decree in appellee's favor was correct.

The statement is made (Supplemental Brief, p. 7) that the insolvency receivership was a burden upon the consolidated bondholders. So far as concerns the expenses of the insolvency receivership, this was not the case. The payments and receipts of the foreclosure receivers on account of the prior receivership were as follows (pp. 426, 427):

Pay rolls.....	\$467,562 79	
Loss and damage claims.....	4,163 45	
Traffic balances.....	53,257 20	
	<hr/>	\$524,983 44
Materials and supplies.....		515,877 87

Total paid by foreclosure receivers on account of insolvency receivership.....	\$1,040,861 31
--	----------------

As against this there was received on account of the former receivership:

Cash.....	\$141,325 19	
Accounts collected.....	384,473 10	525,798 29

Balance paid.....	\$515,063 02
-------------------	--------------

This balance was almost exactly the amount paid for materials and supplies. But when the new company took possession, it received material and supplies to the amount of \$500,000 from the foreclosure receivers (p. 303). This shows that the material and supplies for which the insolvency receivers had contracted came into possession of the foreclosure receivers, and the estate accordingly was not diminished by payment therefor by the latter receivers.

So far as concerns the arrears of interest during the insolvency receivership and the issue of receivers' certificates (Supplemental Brief, p. 7), it has been already pointed out, and was stated in terms in the reorganization agreement, that these were the results of the effort to "hold together the various properties embraced in "the system" in the interest of the bondholders (pp. 512, 533, note[†]). That effort has proved successful as is shown by the existence of the appellant. The appellant, therefore, is not in a position to complain that when the estate came into the hands of the foreclosure receivers it was burdened by the results of the effort.

SECOND.

There is nothing in the objections urged to the appellee's standing as a supply creditor.

In the Supplemental Brief (pp. 7, 8) the appellant repeats the claim already urged in its Principal Briefs—that the cost of these rails is to be regarded as a permanent betterment, and not as an expense necessary to keep the road in operation.

In support of this contention is cited *Mackintosh vs. Railroad Co.*, 34 Fed. Rep., 582. That was a controversy between two classes of stockholders under a reorganization. The reorganization agreement provided that the holders of common stock had no rights, but were merely "provisional stockholders", until the preferred stock had been paid seven successive annual dividends of seven per cent. The new charter provided that the funds applicable to the payment of such dividends were the net income "after paying interest on prior bonds, repairs, expenses of equipment," etc. At the first meeting of the Board of Directors it was resolved that "under operating expenses only such improvements and additions shall be included as are necessary to keep the property efficient, and that all beyond this shall be provided for out of funds other than net earnings." It appeared that a very considerable sum had been expended in replacing iron rails with steel rails, using the iron rails for sidings. The expenses of these changes were in great part charged against the earnings, instead of being charged to new construction. The court said that the fact that the charter provided that repairs should be paid out of the net income did not, as between the two classes of stockholders, warrant this method of dealing with the earnings of the company. "Its effect was not to keep the track in repair—in the same state of efficiency as it existed in on October 1, 1880—but to improve and enhance its value at the expense of earnings, which are thus reduced, and the provisional stockholders correspondingly postponed" (p. 608). Reference is also made to the case of *Grant vs. Railroad Co.*, 93 U. S., 225. The point decided there was that the expression "profits used in construction," within the meaning of the Internal Revenue Act, did not embrace earnings expended in repairs for keeping the property up to its normal condition.

Second. There is nothing in the objections urged to appellee's standing as a supply creditor.

These authorities have no application to the present case. The record does not show that these rails were used for new construction; it shows, on the contrary, that they were used merely in order to maintain the property in suitable condition for operation. The rails were purchased from the appellee generally and not for use in relaying any special portion of the track or in constructing any new track (pp. 370-372). The testimony of the General Manager (pp. 482-484) shows that the rails were distributed over various parts of the system. These rails were, of course, all used prior to the appointment of the receivers. Upon August 12, 1892, very shortly after their appointment the receivers filed a report stating that the financial difficulties of the Railroad Company during the last two years had "prevented the operating officers from being able to expend the proper amount *for new rails, and upon the roadbed and structures, to keep the railroad in the condition in which it should be maintained, and it will be necessary for the receivers, during the summer and autumn to make a much larger expenditure than they would for ordinary maintenance*" (p. 166). Upon January 16, 1894, the foreclosure receivers again stated (p. 246) in a petition to the court that "*for the proper and economical operation of the lines of railroad of which they are receivers, and for the safety of passengers and property transported over such roads, two thousand tons of new steels rails are an absolute necessity,*" and an order of the court was made authorizing purchase of the same (p. 247). Upon April 13, 1894, the same receivers again stated in a petition to the court that "*for the proper, safe and economical operation of the lines of railroad over which they are receivers, and the proper and safe handling of the freight and passenger business on said roads, as required by the orders of this court appointing them as receivers, they require at the present time about twenty-five hundred (2,500) tons of steel rails*" (p. 251), and an order of the court was made authorizing the purchase of such rails (p. 252). In the face of these facts there is no warrant for claiming that the rails now involved, which were purchased in 1891, were used for new construction rather than for the purpose of maintaining the road in a condition suitable for operation.

Attention may again be called to the fact that in Farmers' Loan

Second. There is nothing in the objections urged to appellee's standing as a supply creditor.

and Trust Co. vs. Railway Co., 33 Fed. Rep., 778, where question was raised precisely with reference to claims preferential to the mortgage, it was held that steel rails were entitled to preferential payment as coming within the description of expenses of operation. Objection was made that they were properly betterments, but the court said, "this objection is untenable, for if these "betterments were necessary, and added to the value of the security "held by the bondholders, and were made without objection on "their part, they cannot be heard to complain" (pp. 785, 786). Similarly it has recently been held in N. Y. Guaranty & Indemnity Co. vs. Railway Co., 83 Fed. Rep., 365, that the cost of a steel cable must be regarded as a preferential operating expense. So, too, in Hale vs. Frost, 99 U. S., 389, and Wood vs. Railway Co., 70 Fed. Rep., 741; 75 Fed. Rep., 54, 59, it was held that material furnished in order to keep the equipment in condition for use must be regarded as of the same character. It is clear that there is no distinction in principle between material furnished for repairs upon the equipment and that furnished for repairs upon the roadbed. Each constitutes a very large part of the invested capital of the company, and as to each there is the same necessity to maintain it in condition for efficient operation.

The equitable rights of the appellee as a supply creditor are fully supported by Burnham vs. Bowen, 111 U. S., 776, and Virginia & Alabama Coal Co. vs. Railway Co., 170 U. S., 355, together with the other authorities upon the subject cited upon the appellee's Principal Brief (pp. 15-28). It is significant that neither the Principal Briefs nor the Supplemental Brief on behalf of the appellant make any substantial effort to distinguish these cases. In fact, so far as concerns the Coal Company case, its existence is practically ignored.

THIRD.

The suggestions of the Supplemental Brief regarding the effect of the reorganization are without weight.

1. The record fully presents the questions heretofore urged in that regard by the appellee.

The Reorganization Agreement was attached to the intervening petition of the appellee, setting forth its rights and praying enforcement thereof (pp. 365-370, 503-563). It was admitted by the answer to said petition (pp. 376, 377, 378), and was referred to as in the case in a stipulation filed with the Masters regarding the issue of securities under the reorganization agreement (p. 386). The agreement was, therefore, a part of the pleadings which were before the Masters when they passed upon the claim of the appellee. As it was set up in the petition and admitted by the answer, it was, of course, not necessary to offer the agreement in evidence.

The hearing before the Masters was closed upon May 18, 1894 (p. 381), and the sale did not take place until June 15, 1894 (p. 289). So that it would not have been practicable to introduce testimony to show that the reorganization was carried into effect. That, however, appears from the record, because it shows that the property was sold upon June 15, 1894 (p. 289); and was purchased by the purchasing committee of the bondholders (pp. 290, 291) who vested title in a new corporation to be known as the Southern Railway Company (p. 294), and that the Southern Railway Company was accepted as the purchaser by order of court entered upon June 15, 1894, upon condition that it should pay such further claims as it might be directed by the court (p. 301). The corporation thus created is the present appellant. The files of the court sufficiently show these facts. They are not and cannot be controverted in any respect.

The real purchasers of the property are the reorganized stockholders of the former company. They are its owners under the name of the Southern Railway Company. This court of equity still has control of the property for the purpose of compelling the purchaser to do equity as regards claims generally against the property (pp. 280, 282, 301). As the reorganization

Third. The suggestions of the Supplemental Brief regarding the effect of the reorganization are without weight.

agreement provides that the stockholders of the former company shall still have an interest in the property to the exclusion of its floating debt, it is entirely competent for the court to direct that the stockholders as reorganized shall pay that floating debt. The remedy by independent bill would be extremely slow and, as the parties interested, namely, the appellant and the appellee, and also the subject matter are under the full control of the court, and the facts cannot be denied, there is no reason why the appellee should be remitted to an independent bill which might raise difficult questions regarding the jurisdiction and the remedy. Certainly the statement of the Supplemental Brief that the purchase contemplated by the reorganization plan may never be consummated, is entitled to no weight in view of the fact that the party which makes that statement is shown by the record to be the product and result of that purchase.

2. There is no merit in the distinction sought to be made between the present case and *Railroad Co. vs. Howard*, 7 Wall., 292.

The suggestion is made that the present case differs from the *Howard* case because in the latter the bill sought a ratable application of the fund among all unsecured creditors, while here the appellee is seeking satisfaction merely of its own debt. But this is not an accurate statement of the position. The present appellee is asserting its own claim, but this does not affect in any respect the rights of those similarly situated, and no effort is made here to prejudice those rights. As already shown (*supra*, p. 3) the amount of those claims is very small; probably they also are entitled to payment.

As regards the amounts to be received under the terms of the reorganization plan by the stockholders of the Richmond and Danville Company, the facts are fully stated upon pages 48 and 49 of the Principal Brief for the appellee. It will be seen from that statement that the holders of both bonds and preferred and common stock of the Terminal Company received new preferred stock and new common stock for the express reason that they already held the capital stock of the Richmond and Danville Company, and that none of these holders of Terminal securities paid any assessment, save the holders of the common stock. They, it is true, were to pay in a large amount to clear

Third. The suggestions of the Supplemental Brief regarding the effect of the reorganization are without weight.

off the debt of the Richmond and Danville Company. This doubtless appeared to counsel who prepared the plan necessary by reason of the Howard case. But no part of this fund has been applied to paying the debts of the appellee and a few others. Why this is the fact the record does not disclose.

It is sought to distinguish the Howard case upon the ground that the mortgage bondholders, there in express terms released and discharged their lien upon the portion of the proceeds of sale payable to the stockholders of the former company, and that, therefore, that portion was assets of the Railway Company. This does not really distinguish that case from the present. There the lien was discharged only by the reorganization agreement in the manner therein prescribed. So, too, here it could properly be said that the consolidated bondholders released their rights against the securities representing the interest of the stockholders in the new company. The reservation contained in the reorganization agreement which is set forth in the Supplemental Brief (pp. 13, 14), therefore, has no bearing upon this question; for it was evidently useless to provide that the claims of all stockholders and creditors should be cut off by the foreclosure, while at the same time a substantial interest in the property was secured by the reorganization to the stockholders, but the creditors were left unpaid. The precise point ruled in the Howard case is that this cannot be done.

The objections urged regarding the rights of the appellees in view of the reorganization are based upon technical refinements. It is submitted that as there is no question as to the facts, the parties are before the court and the property is still within its control, the court will dispose of the matter upon the merits. It is not accurate to speak of the question as one regarding the proceeds of the sale; the point is really whether the reorganized stockholders of the debtor company shall pay its debts before dividing among themselves whatever equity there may be in its property.

P. C. KNOX,
DAVID WILLCOX,
Of Counsel.

SOUTHERN RAILWAY COMPANY *v.* CARNEGIE STEEL COMPANY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH
CIRCUIT.

No. 8. Argued October 13, 14, 1898. — Decided January 29, 1900.

In a decree for the foreclosure and sale of a railroad property under a mortgage, power was reserved by the court to compel the purchaser to pay any and all receivers' debts or claims adjudged or to be adjudged as prior in lien or equity to the mortgage debts or entitled to preference in payment out of the proceeds of sale. *Held*, That the rights of creditors whose claims had been filed were not affected by the sale of the property or by the fact of its transfer to the purchaser; nor did the reservation in the order of sale prevent the purchaser from contesting upon their merits any claims allowed after the purchase under the decree of sale.

A railroad mortgagee when accepting his security impliedly agrees that the current debts of a railroad company contracted in the ordinary course of its business shall be paid out of current receipts before he has any claim upon such income; that, within this rule, a debt not contracted upon the personal credit of the company, but in order to keep the railroad itself in condition to be used with reasonable safety for the transportation of persons and property, and with the expectation of the parties that it was to be met out of the current receipts of the company, may be treated as a current debt; that whether the debt was contracted upon the personal credit of the company, without any reference to its receipts, is to be determined in each case by the amount of the debt, the time and terms of payment, and all other circumstances attending the transaction; and that when current earnings are used for the benefit of mortgage creditors before current expenses are paid, the mortgage security is chargeable in equity with the restoration of the funds thus improperly diverted from their primary use.

Statement of the Case.

A general, unsecured creditor of an insolvent railroad corporation in the hands of a receiver is not entitled to priority over mortgage creditors in the distribution of net earnings simply because that which he furnished to the company prior to the appointment of the receiver was for the preservation of the property and the benefit of the mortgage securities. Before such a creditor is accorded a preference over mortgage creditors in the distribution of net earnings in the hands of a receiver of a railroad company, it should reasonably appear, from all the circumstances, that the debt was one to be fairly regarded as part of the operating expenses of the railroad incurred in the ordinary course of business and to be met out of current receipts.

THIS case is here upon a writ of certiorari for the review of a final decree of the United States Circuit Court of Appeals for the Fourth Circuit allowing certain claims of the Carnegie Steel Company, Limited, as preferential debts chargeable upon current receipts arising from the operation of certain railroad properties in the hands of receivers.

On the 15th day of June, 1892, William P. Clyde, John C. Maben and William H. Goadby, citizens of New York, suing for themselves and other creditors and stockholders of the Richmond and Danville Railroad Company and of other defendant corporations, exhibited in the Circuit Court of the United States for the Eastern District of Virginia a bill of complaint against the Richmond and Danville Railroad Company and the Richmond and West Point Terminal Railway and Warehouse Company, Virginia corporations. The bill made the following case:

The Richmond and Danville Railroad Company (hereafter called the Danville Company), in addition to its own line extending from Richmond to Danville, with a twelve-mile branch, being 152 miles of road, through the purchase or the acquisition of stock, or by written lease or operating contracts, obtained the possession and control of more than twenty other railways built under the respective charters of and owned by the corporations named in the bill. It also owned the entire capital stock of the Baltimore, Chesapeake and Richmond Steamboat Company, and through it operated a line of steamers between Richmond, West Point and Baltimore. Its authorized and outstanding capital stock was five

Statement of the Case.

million dollars, the larger part being owned by its codefendant company.

The lines of railway comprising this system, known as the Danville system, were in Virginia, North Carolina, South Carolina, Georgia, Alabama and Mississippi, and reached many of the most important trade centres of those States.

For more than five years prior to the institution of that suit the Danville Company had held in possession and substantial control all the railways of the other companies in connection with its own road as a single system. Over a large portion of the mileage the engines and cars in traffic service were used without any fixed apportionment thereof to any specific portion of the system, and the income derived from the operations of the parent and auxiliary leased and operated lines were received and distributed through a common treasury with no separation of the earnings and expenses of the several properties, except by entries in books of account apportioning the gross income and expenses on some approximate but arbitrary basis of division as between the different lines over which the traffic yielding the revenue had passed.

The total mileage of the auxiliary portion of the Danville railroad, added to its own mileage, aggregated 3320 miles, exclusive of its steamer service.

The aggregate outstanding capital stock of the lines constituting the system, together with the stock of the steamboat company, amounted to \$43,482,950, of which \$10,707,354 was neither owned nor controlled by the defendant companies.

Through the ownership of all or a majority of the stock thereof, some of the roads were operated by the Danville Company as proprietary lines. Others were operated upon the basis of a fixed rental or payment of net earnings, or a guarantee of interest on bonds or dividends of stock, or both.

In consequence of the absorption of such roads in its system by lease or contract, the bonded debts and rental obligations which the Danville Company had assumed and became liable for amounted to \$71,128,126. Its own direct bonded debt was \$16,136,000, making the total bonded and rental debt of the Danville system \$87,314,126.

Statement of the Case.

The bonded debt resting on the Danville road proper and equipments was in five separate issues of securities; that resting on its auxiliary and operative lines was embraced in fifty-nine different classes of securities issued by the several companies, secured by separate mortgages or deeds of trust covering different sections of the controlled roads or their equipment, capable of separate default or foreclosure, besides five stock guarantees, representing certain of its rental obligations, also secured by provisions for reëntry on default.

The Danville Company also had outstanding car trust obligations of its own and leased lines amounting to \$1,542,824, and a floating debt of over \$5,000,000; also an emergency loan of \$600,000, advanced by those interested in the property to prevent default on April 1, 1892.

Besides all such outstanding fixed liabilities on account of its own road and controlled lines, the directors of the Danville Company had pledged its credit and subjected it to other heavy liabilities, to enable its codefendant, the Richmond and West Point Terminal Railway and Warehouse Company — to be hereafter referred to as the Terminal Company — or certain of its controlled companies to acquire the stock control of other lines of railroads not directly connected with or operated by the Danville Company and in which it had no interest whatever. Its board of directors had issued \$6,000,000 of bonds of the Danville Company, executed jointly and severally with the East Tennessee, Virginia and Georgia Company, and guaranteed by the Terminal Company "Cincinnati Extension Bonds," which were secured by a trust pledge of preference and ordinary shares of the Alabama and Great Southern Railway Company, Limited. Those bonds had been sold in open market, and apparently constituted an outstanding liability of the Danville Company, but for which it received no valuable consideration whatever. It had executed the same as mere accommodation paper and as a partnership adventure, and was only protected against loss by the above pledge of corporate stock of uncertain value, because it was subject to heavy prior mortgage debts, and the line of road of the particular corporation issuing such stock was a

Statement of the Case.

central link in the system of the East Tennessee Railway system over which the Danville Company had no control whatever.

By reason of the absolute stock control which the Terminal Company had over the Danville Company it compelled the latter company about June 1, 1891, to become the assignee and guarantor of a written lease executed by the Central Railroad and Banking Company of Georgia, of all its system of railroads and steamer lines for a long term of years to the Georgia Pacific Railway Company, whereby the Danville Company became bound to operate the Central System and to assume and pay all the interest on the bonded debts and all the rental obligations of the Central Railroad and Banking Company; and the Danville Company was compelled to execute and deliver a bond of \$1,000,000 to faithfully perform all the covenants in such lease. The result of the operation of the Central-Georgia system of roads had been a constant and heavy loss to the Danville Company.

The bill next set out the relations between the Danville Company and the Terminal Company, and also described what is known as the Tennessee system, having 2318 miles in length of proprietary, leased and operated roads.

It then stated that the five several issues of bonds of the Danville Company were secured by mortgages to divers trustees and constituted liens of varying rank upon some portion of its road, franchises and equipment; that the bonds issued by the Danville and Terminal Companies, as well as a large majority of the several issues of bonds resting on the different separately mortgaged sections of the Danville system, were owned by a large and constantly shifting number of persons and corporations, who were scattered in many different States and countries and had no organization or registration; that what was known as the emergency loan, for which the income of the Danville system was pledged, was advanced in equal sums by a considerable number of persons, many of whom preferred not to have their names or advances disclosed; that the plaintiff, Mabon, was a registered stockholder of the Danville Company; that the plaintiffs were

Statement of the Case.

owners of a large amount of the common preferred stock of the Terminal Company and of its six and five per cent bonds, of the Danville Company's debenture and five per cent bonds and of different classes of bonds resting on parts of the Danville system, and some of them were creditors of the Danville Company on account of advances made to the emergency loan, and entitled to the security given therefor; that while nominally distinct corporations, the actual transactions and financial arrangements between the Terminal Company, conducting no active business as a security company, with no assets except stocks and bonds, (but holding nearly the entire capital stock of the Danville Company,) and the Danville Company, as a corporation, operating a large system of railways, separately organized and mortgaged, had resulted in serious complications; that such community of heavy and extra-hazardous liability and hypothecation indissolubly connected the financial operations of the Danville and Terminal Companies, so that the unrelieved embarrassment of either company would necessarily force the insolvency of the other, "and produce a disruption of the system of roads;" that the then financial condition of the two defendant corporations was alarming to the holders of their stocks and bonds; that in the latter part of 1891 the large and increasing floating debts of the several properties in which the Terminal Company was interested and the heavy losses incurred in the operations of some of the roads, created much uneasiness among the stockholders and creditors; that by reason of such condition of things, the management had invited prominent financiers to investigate the several systems and aid in perfecting the best plan for permanently adjusting the affairs of the companies in question and secure them the credit necessary for their successful operation; that two movements to that end had failed, when about the last of May, 1892, "a large number of security holders joined in a request to an eminent banking firm of New York City that it should investigate the property and its financial condition, and undertake to rescue it from the bankruptcy, shrinkage in value and disruption with which the system was threatened;" that such bankers consented to cause an exami-

Statement of the Case.

nation to be made, and the plaintiffs were advised that the same was in progress, but that no conclusion had been reached or report made, and necessarily the creditors and security holders were so numerous, scattered and unknown, and the classes of liens so varied in character and value, that to perfect any satisfactory plan to reorganize the system and secure the necessary creditors' assent would require considerable time; and that in the meantime the financial embarrassments continued to be urgent and threatening, and the possible consequence thereof might "result in the disruption of the system, and the depreciation of millions of dollars in the value of the securities."

The bill further alleged that the enormous floating debt of the Danville Company was wholly beyond its financial ability to carry out of its ordinary revenues, over \$4,500,000 of such debt standing in demand loans subject to summary enforcement; that by reason of the depreciation in the market value of its securities, and the failure of the several efforts to reorganize the property, its credit had been much impaired; it was not able to pay its obligations as they matured, but had been forced to ask renewals; it had no available collaterals to enable it to negotiate such a loan as was necessary to adequately protect it against open default; it had been forced to postpone payment of usual operating expense vouchers for supplies, and was allowing heavy arrears of such debts to accrue; many creditors had brought suits and attached cars and funds forwarded to pay employes; besides its floating debt, mortgage coupons on seventeen sectional mortgages, aggregating \$989,000, would fall due on July 1, 1892; it had no available money or assets wherewith to pay the debts which would soon mature and no reasonable hope of financial assistance from any quarter to enable it to do so; its directors had had no meeting for over two months, and had practically abdicated their trust and power of management and confessed their utter inability to devise means to divert the insolvency and disruption of the system in their charge.

Plaintiffs charged that the corporation was insolvent and

Statement of the Case.

this vast trust property was substantially derelict; that the unity of the property, as held and operated as an important trunk line, constituted one of the most important ingredients of its value, and that to permit its severance would result in a ruinous sacrifice to every interest in the property; that the owned and operated lines of road lie in six States, and were subject to the jurisdiction of the courts in each of the many counties in which the property was situate; that unless the court, in view of the impending and inevitable defaults as aforesaid, would deal with the property as a single trust fund, and take it into judicial custody for the protection of every interest therein, individual creditors, immediately upon default, would assert their remedies in different courts in the several States; that a race of diligence would result, and judgments and priorities attempted; that levies and attachments would be laid upon the engines and cars of the company, and upon the fuel, material and supplies indispensable to the operations of the road and which would greatly interfere and ultimately prevent the company from properly discharging its duties as a public carrier, and seriously diminish the earnings of the road; that lessors of the roads now owned would enforce the reentry covenants of their leases; that the continued default of the mortgaged debts would produce the immediate maturity of the bonds; and that "a vast and unnecessary multiplicity of suits will result, and a most important and valuable trust property will be dismembered by the clashing decrees of the many courts exercising jurisdiction at the suit of separate creditors, which might be shielded and preserved as a valuable single trust property by adequate judicial protection until such time as a satisfactory financial reorganization could be perfected."

The plaintiffs also averred "that the Central Trust Company is not only the trust depository in the said pledge of income, but is the trustee in over twelve trust deeds executed by the Danville, Company and divers roads in its system, and also trustee for the preferred stockholders and 6% and 5% trust deeds of the Terminal Company. That the trusts and duties in said different deeds as to property, equipment and income

Statement of the Case.

are variant, and in some respect antagonistic. In case of default and judicial enforcement, their reciprocal rights will have to be construed and decreed by the court, and such common trustee cannot properly represent such variant trusts; and the bondholders have the equity to apply in their own names to protect the trust estate."

The relief asked was —

That the court would decree that the plaintiffs as holders of aliquot portions of the emergency loan to the Danville Company, guaranteed by the Terminal Company, had a fixed and specific lien upon all and singular the income, tolls and revenues of the Danville Company and its leased, operated and controlled railroads, and each of them, and that the condition of such pledge of income had been broken, entitling the holders of such indebtedness to enforcement thereof;

That the court would also administer the trust fund in which the plaintiffs were interested, constituting the entire railroad and assets of the defendant corporations, and would for that purpose marshal all their assets and ascertain the respective liens and priorities existing upon every part of such system of railways, the amount due upon mortgages and other liens, and enforce and decree the rights, liens and equities of each and all of the stockholders and creditors of the Danville and Terminal Companies as the same were finally ascertained and decreed, in and to not only those lines of railroads, appurtenances and equipments, but also to and upon every portion of the assets and property of each of those corporations; and

That for the purpose of enforcing a lien and equity upon the income of the railroad system aforesaid, to which the holders of the emergency loan were by contract entitled, "as well as to preserve the unity of said system," as it had been for years maintained and operated, and preventing the disruption thereof by separate executions, attachments or sequestrations, the occurrence of which would be inevitable in view of the defaults in interest payments which would presently occur, the court would forthwith appoint one or more receivers of the entire system of railroads and steamers held and operated by the Danville Company, together with all equip-

Statement of the Case.

ment, material, machinery, supplies, moneys, accounts, choses in action and assets of every description and wherever situated, together with all leasehold rights and contracts, with authority to manage and operate the same as the officers of and under the direction of the court, and that all the officers, managers, superintendents and employés of the Danville Company be required to forthwith deliver up the possession of all and singular each and every part of the property, over which the receivers were thus appointed, wherever situate, and also all books of accounts, offices, vouchers and papers in any way relating to the business or operation of such system of railways and steamers, and for injunctions restraining each and every of the officers, directors, managers, superintendents, agents and employés of the Danville Company from interfering in any way whatever with the possession and control of the receivers over any part of the property.

Upon hearing and considering the bill, with the exhibits and answer in support thereof, and on motion of the complainants, Frederic W. Huidekoper and Reuben Foster were appointed by the court receivers of the property and assets of the Danville Company, namely, the system of railways then in the possession of and owned and controlled by that corporation, situated in the District of Columbia and in the States of Virginia, North and South Carolina, Georgia, Alabama and Mississippi, together with all the equipment, shops, appurtenances of every kind, machinery, material and supplies owned, held or in the possession and use of such corporation, wherever situate, including all tracks, terminal facilities, real estate, warehouses, offices, stations and all other buildings of every kind, owned, held or possessed by the Danville Company, together with all steamers, wharves and other properties held in connection therewith, and all moneys, choses in action, credits, bonds, stocks, leasehold interests or operating contracts, and other assets of every kind, and all other property, real, personal and mixed, owned, held or possessed by that company.

It was further provided in the order of the court that the receivers "shall, from time to time, out of the funds coming

Statement of the Case.

into their hands from the operation of the property, pay the expense of operating the same and executing their trusts, and all taxes and assessments upon the said property or any part thereof, and also pay and discharge all such traffic and car mileage balances as may be due to connecting and other railways, and all such loss and damage claims arising from the previous operation of said property as, in their judgment, on examination, are proper to be paid as expenses of operation; and shall also, out of the moneys coming into their hands, pay and discharge all the current unpaid pay rolls and vouchers and supply accounts incurred in the operations of said railroad system, at any time within six months prior hereto."

The receivers, who are referred to in the record as the insolvency receivers, entered into full and exclusive possession on the 16th day of June, 1892.

On that and the succeeding day auxiliary suits were instituted by the plaintiffs against the Danville Company in the Circuit Courts of the United States for the Western District of North Carolina, the District of South Carolina, the Northern District of Georgia, the Northern District of Alabama and the Northern District of Mississippi, and orders were duly entered of record by each of those courts confirming the original appointment of receivers and recognizing the Circuit Court of the Eastern District of Virginia as having primary jurisdiction over all the railroad system and property of the Danville Company wherever situated.

On the 28th day of June, 1892, the plaintiffs filed a petition in the cause, stating that the Central Trust Company of New York was trustee in five mortgages executed by the Danville Company, resting upon its property, and of the following dates and amounts: October 5, 1874, \$5,997,000; February 1, 1882, \$3,368,000; October 22, 1886, \$4,498,000; September 3, 1889, \$1,390,000; May 1, 1891, \$883,000. The petitioners prayed that the receivers be authorized to execute and sell receivers' certificates to an amount not exceeding \$1,000,000, which should be a first lien on the Richmond and Danville Railroad, its property, leasehold interests, contracts and income, "and out of the proceeds, as a special fund, to pay and

Statement of the Case.

discharge all outstanding indebtedness of the Danville Company incurred for material and supplies in the operation of the roads in the receivers' hands, which were purchased within six months prior to June 15, 1892, as the said indebtedness shall be ascertained and reported on by special masters to be appointed for such purpose; and also, that out of the funds coming into their hands from the operation of the roads which could be safely used without prejudice to their own current liabilities for operating expenses, the receivers be authorized to pay the instalments of rent and coupons of mortgage bonds resting "upon the several parts of the system, so as to protect and preserve the present unity of the system of roads in their charge." The petition concluded: "The Central Trust Company is the trustee in each and all of the trust deeds and mortgages, and it is made a party hereto, so that it can appear to the application and be heard upon the question of using receivers' certificates, and authorizing the payment of mortgage, interest and rental obligations out of the current net income of the receivership."

Of the application for an order in accordance with the petition, the defendants and the Central Trust Company had notice. The court by order authorized the borrowing of \$1,000,000 receiver's certificates to be used for the purposes indicated in the petition. The Trust Company was represented at the hearing of the application; and so far as the record discloses, made no objection to the order.

On the 13th day of July, 1892, the Central Trust Company presented its petition and prayed that it be allowed to intervene in the suit brought by Clyde and others for the protection of the holders of the six per cent bonds of the Danville Company and of the subscribers to the emergency loan made prior to April 1, 1892, and in respect of which that company was the trust depository of the income of the Danville system pledged to secure such loan; and by order entered August 16, 1892, leave was given for that company to intervene in the cause, "on the condition that it hereby submits to the several orders heretofore entered herein." On the latter day that company presented its petition, asking that Huide-

Statement of the Case.

koper and Foster be appointed as permanent receivers of the Danville Company, if the court should determine to continue its judicial possession of the system. An order to that effect was accordingly made. In presenting the above petition the Central Trust Company appeared not only as trustee of the Richmond and Danville Railroad Company and the consolidated gold mortgage to be presently referred to, but as trustee representing other mortgages and railroads, including the Virginia Midland Railroad, the Georgia Pacific Railway, and the North Eastern Railroad of Georgia.

On the 19th day of December, 1892, an intervening petition was presented by parties representing the underlying bondholders interested in any litigation or proceedings for the foreclosure of any of the mortgage or trust deeds of the Danville Company or any of the companies forming a part of the Danville system, and they were permitted to become parties complainant in the Clyde suit and to file such petitions and take such proceedings as they deemed necessary or requisite for the protection of the interests they represented.

In the suit instituted by Clyde and others, the Carnegie Steel Company, Limited, filed with the Master Commissioner, October 14, 1892, its claims arising out of certain contracts made between that company and the Danville Railroad Company in 1891 for steel rails delivered to the latter between July 25, 1891, and October 10, 1891. The facts relating to those contracts will be hereafter stated.

On the 13th day of April, 1894, the Central Trust Company of New York instituted a separate suit against the Richmond and Danville Railroad Company for the foreclosure of what is known as the consolidated gold mortgage. Upon the filing of that petition, and on the motion of the Trust Company, an order was entered appointing Huidekoper, Foster and Spencer receivers of the court of all and singular the railroads, property, assets, credits and effects of the Richmond and Danville Railroad Company, "the same being the system of railways owned, operated or controlled by the said corporation, situate in the District of Columbia and in the States of Virginia, North Carolina, South Carolina, Georgia, Alabama and Mis-

Statement of the Case.

issippi, together with all the equipment, shops," etc., "and other assets of every kind, and all other property, real, personal and mixed, held or possessed by the said railroad company, the above-mentioned property being now in the possession, of said Frederic W. Huidekoper and Reuben Foster, receivers duly appointed by this court in a certain suit brought in this court and now pending therein, wherein William P. Clyde and others are plaintiffs and the Richmond and Danville Railroad Company and others are defendants." These receivers are described in the record as the foreclosure receivers.

The order last named contained this clause :

"Nothing in this order contained shall be construed to vacate any of the orders heretofore entered in the case of William P. Clyde and others; but the court reserves full power to act upon the masters' reports filed in the said cause, and in said cause to adjudge and decree upon the rights of creditors ascertaining [asserting] a claim against the property of the said railroad company or income thereof, in preference to the mortgage debt thereof, by orders to be entered in the said suit of William P. Clyde and others, upon notice to parties, with like effect upon the mortgaged property and income as if such orders were entered in this cause."

The Carnegie Company was permitted to intervene in the suit brought by the Central Trust Company, alleging in its petition that the rails sold and delivered by it to the Danville Company were used upon its roadbed for the purpose of maintaining the same in condition to conduct its traffic thereon and were necessary for that purpose. The claimants referred to the fact that they had previously filed their claim in the Clyde suit, "which claim is now pending in said cause before the masters, the demand of your petitioner that the same shall be allowed as a claim entitled to equitable priority of payment over the mortgage debt of the said defendant not having been heard or considered by said masters."

On the 17th day of February, 1894, the suit instituted by the Central Trust Company of New York and the one brought by Clyde and others were consolidated under the name of "*The Central Trust Company of New York and others v.*

Statement of the Case.

The Richmond and Danville Railroad Company and others, Consolidated Cause." Upon application of the Carnegie Company it was made a party defendant in the consolidated cause.

A decree of foreclosure and sale in the consolidated cause was entered April 13, 1894, and a sale took place June 15, 1894, the property embraced by the decree being sold as a unit. Charles H. Coster and Anthony J. Thomas, a purchasing committee, as joint tenants purchased the property for the use, benefit and behoof of a corporation to be organized pursuant to the terms of an act of the General Assembly of Virginia, approved February 20, 1894, entitled "An act authorizing the purchasers of the Richmond and Danville Railroad, their assigns and successors, to become and be a corporation." The sale was approved by formal order of court and confirmed to the purchasing committee, composed of Coster and Thomas, for the sole use, benefit and behoof of the Southern Railway Company created under the laws of Virginia.

The decree of confirmation contained the following clauses: "And the court accepts the said Southern Railway Company as the purchaser of all and singular the railroad, property and franchises sold under this decree, and holds it as such purchaser obligated to complete and fully to pay the said bid and comply with all the orders of the court already entered, and hereafter, from time to time, to be entered by it obligatory on such purchaser. And the court further reserves full power from time to time to enter orders binding upon the said Southern Railway Company as such purchaser, requiring it to pay into the registry of the court all such sums as have been or may be ordered by the court for the payment of any and all receivers' debts or claims adjudged or to be adjudged as prior in lien or equity to the mortgage herein foreclosed, or entitled to preference in payment out of the proceeds of sale." That order also contained this clause: "The court reserves full power notwithstanding such conveyance and delivery of possession to retake and resell the property this day confirmed to such purchaser if it fails or neglects fully to complete such

Statement of the Case.

purchase and comply with the orders of court in respect to full compliance therewith, or to pay into court, in accordance with such decree of sale and orders of court, all sums of money hereafter ordered by the court to be paid into its registry to discharge any and all such debts, liens or claims as it may decree ought to be paid out of the proceeds of sale in preference to the mortgage herein foreclosed."

Subsequently, upon hearing of the exceptions to the masters' report on the claim of the Carnegie Steel Company, Limited, the Circuit Court found that that company furnished to the railroad company, at the dates and in the quantities named in their petition for claim, steel rails to the aggregate value of \$125,067.39, which the company used and agreed to pay for, and that the interest on that amount was \$29,828.58; in all, \$154,895.97. It further found that that sum had never been paid by the railroad company; that "the earnings of said defendant railroad company, which should have been used for the payment of current expenses, including therein this claim, have been used for the benefit of mortgage creditors, in a sum more than sufficient to pay said claim in full;" and that "prior to May 1, 1888, bonds of the Richmond and Danville Railroad Company known as consolidated bonds were issued to the amount of \$1,621,000, and that since that date such bonds have been issued to the amount of \$2,906,000." And it was adjudged that the claim, with interest thereon from the time when the respective items thereof became due and payable by the Danville Company, was entitled to priority of payment out of the funds resulting from the sale of the mortgaged property, over the bonds secured by the mortgage foreclosed by the decree heretofore passed in this cause, and was also entitled by reason also of the statutes of Virginia "to priority of payment out of the fund resulting from the sale of the mortgaged property, over such of the bonds secured by the mortgage foreclosed by the decree heretofore passed in this cause as were issued after May 1, 1888, being \$2,906,000 in amount." It was further ordered that "the purchaser at the sale heretofore made, or his assigns, do forthwith pay to the Carnegie Steel Company, Limited, said sum of \$154,895.97, in

Opinion of the Court.

compliance with the terms of the decree of sale heretofore passed, whereby the purchaser at such sale, or his assigns, was required to pay off and satisfy all claims filed in this cause, which this court should adjudge prior to the mortgage by said decree foreclosed."

The Southern Railway Company prosecuted an appeal from that order to the Circuit Court of Appeals, and the action of the Circuit Court was approved. 42 U. S. App. 145; 76 Fed. Rep. 492. The case is in this court upon certiorari, sued out by the railway company.

Mr. Henry Crawford and *Mr. Edward J. Phelps* for appellant. *Mr. Willis B. Smith* was on their brief.

Mr. Nicholas P. Bond and *Mr. David Willcox* for appellees. *Mr. P. C. Knox* was on their brief.

MR. JUSTICE HARLAN, after stating the facts as above, delivered the opinion of the court.

It appears from the above statement that the property in the hands of the receivers in the Clyde or insolvency suit was surrendered to the receivers in the foreclosure suit under an order that expressly reserved power in the court to adjudge and decree in the Clyde suit upon the rights of creditors asserting claims against the property of the railroad company or its income in preference to mortgage debts. Besides, the decree of sale provided that the purchaser or purchasers, or his or their assigns, under any decretal sale should, as a part of the consideration, in addition to any sum bid, take the property upon the express condition that he or they would pay and satisfy (among other specified claims) all claims theretofore "filed in this case or in either of the causes consolidated herein, but only when said court shall allow such claims and adjudge the same to be prior in lien or superior in equity to the mortgage foreclosed in this suit, and in accordance with the order or orders of the court allowing such claims and adjudging with respect thereto." And the right was dis-

Opinion of the Court.

tinctly reserved to retake and resell the property in case the purchaser or purchasers, or his or their assigns, failed or neglected to comply with the order of court in respect of the payment of such prior liens. These conditions were repeated in the order confirming the sale. So that the right of the Carnegie Company to have its claims determined upon their merits is not at all affected by the sale of the property held by the receivers in the consolidated cause, or by the fact of its transfer to the Southern Railway Company. And we add that the above reservation in the orders and decree of the Circuit Court left it open for the Southern Railway Company to contest, upon their merits, any claims allowed after its purchase under the decree of sale.

The respective rights of the mortgagees of a railroad company and of parties having claims against it at the time its property passed into the hands of receivers have been frequently the subject of consideration by this court. But as counsel differ as to the scope and effect of former decisions, it is necessary to examine them and ascertain whether those decisions embrace the case now before the court.

The leading case is *Fosdick v. Schall*, 99 U. S. 235, 252, 253, which related to a claim against a railroad company for rent of cars. In that case Chief Justice Waite delivered the unanimous judgment of the court. After observing that the business of all railroad companies was done to a greater or less extent on credit, and that this credit was longer or shorter as the necessities of the case required said: "The income out of which the mortgagee is to be paid is the net income obtained by deducting from the gross earnings what is required for necessary operating and managing expenses, proper equipment and useful improvements. Every railroad mortgagee in accepting his security impliedly agrees that the current debts made in the ordinary course of business shall be paid from the current receipts before he has any claim upon the income. If for the convenience of the moment something is taken from what may not improperly be called the current debt fund, and put into that which belongs to the mortgage creditors, it certainly is not inequitable for the court, when asked by the

Opinion of the Court.

mortgagees to take possession of the future income and hold it for their benefit, to require as a condition of such an order that what is due from the earnings to the current debt shall be paid by the court from the future current receipts before anything derived from that source goes to the mortgagees. In this way the court will only do what, if a receiver should not be appointed, the company ought itself to do. For even though the mortgage may in terms give a lien upon the profits and income, until possession of the mortgaged premises is actually taken or something equivalent done, the whole earnings belong to the company and are subject to its control." The court further said: "The mortgagee has his strict rights which he may enforce in the ordinary way. If he asks no favors he need grant none. But if he calls upon a court of chancery to put forth its extraordinary powers and grant him purely equitable relief, he may with propriety be required to submit to the operation of a rule which applies in such cases, and do equity in order to get equity. The appointment of a receiver is not a matter of strict right. Such an application calls for the exercise of judicial discretion; and the chancellor should so mould his order that while favoring one injustice is not done to another. If this cannot be accomplished the application should ordinarily be denied. We think also that if no such order is made when the receiver is appointed, and it appears in the progress of the cause that bonded interest has been paid, additional equipment provided, or lasting and valuable improvements made out of earnings which ought in equity to have been employed to keep down debts for labor, supplies and the like, it is within the power of the court to use the income from the receivership to discharge obligations which, but for the diversion of funds, would have been paid in the ordinary course of business. This, not because the creditors to whom such debts are due have in law a lien upon the mortgaged property or the income, but because, in a sense, the officers of the company are trustees of the earnings for the benefit of the different classes of creditors and stockholders; and if they give to one class of creditors that which properly belongs to another, the

Opinion of the Court.

court may, upon an adjustment of the accounts, so use the income which comes into its own hands as, if practicable, to restore the parties to their original equitable rights. While, ordinarily, this power is confined to the appropriation of the income of the receivership and the proceeds of moneyed assets that have been taken from the company, cases may arise where equity will require the use of the proceeds of the sale of the mortgaged property in the same way. . . . No fixed and inflexible rule can be laid down for the government of the courts in all cases. Each case will necessarily have its own peculiarities, which must to a greater or less extent influence the chancellor when he comes to act. The power rests upon the fact that in the administration of the affairs of the company the mortgage creditors have got possession of that which in equity belonged to the whole or a part of the general creditors. Whatever is done, therefore, must be with a view to a restoration by the mortgage creditors of that which they have thus inequitably obtained. It follows that if there has been in reality no diversion, there can be no restoration; and that the amount of the restoration should be made to depend upon the amount of the diversion. If in the exercise of this power errors are committed, they, like others, are open to correction on appeal. All depends upon a proper application of well-settled rules of equity jurisprudence to the facts of the case, as established by the evidence."

In *Hale v. Frost*, 99 U. S. 389, it appeared that a receiver was appointed in a suit brought by trustees to foreclose mortgages executed by a railroad company. He was appointed May 19, 1875, at which time the company owed employes for back wages and was indebted for current supplies. To the Union Car Spring Manufacturing Company it was indebted for springs and spirals furnished in March and April before the appointment of the receiver, and which he continued to use. It was also indebted to Hale, Ayer & Co. for supplies to the machinery department and for materials for construction purposes; and on the 13th day of February, 1873, a given amount was due them, as evidenced by the notes of the railroad company falling due on that day. The judges who

Opinion of the Court.

heard the case in the court of original jurisdiction were divided in opinion on the following points made by intervening creditors: 1. That the railway mortgage was a prior lien only upon the net earnings of the road, after the payment of all the operating expenses, while the road was in the possession of the company. 2. That after the default in the payment of the interest November 1, 1873, the fact that the mortgagees funded their coupons and left the company in possession of the road constituted the company their agent and trustee in equity, and they were estopped from objecting to the payment from the earnings of the road of all legitimate debts contracted by the company for operating expenses. 3. That the net earnings of the road, while in the possession of the court and operated by its receiver, were not necessarily and exclusively the property of the mortgagees, but were subject to the disposal of the chancellor in the payment of claims which had superior equities, if such should be found to exist, and that the intervening petitioners' claims had superior equities to those of the mortgagees. The petitions were dismissed and the intervenors appealed. This court, speaking by Chief Justice Waite, said: "The first question certified in this case is answered in the affirmative, upon the authority of *Fosdick v. Schall*. The third question is answered in the same way upon the same authority. The Union Car Spring Manufacturing Company is entitled to payment in full, and Hale, Ayer & Co. to payment of so much of their claim only as is for supplies to the machinery department. There is nothing in the case to show any special equities in their favor in respect to that part of their account which is for material for construction purposes. An answer to the second question is unnecessary."

In *Burnham v. Bowen*, 111 U. S. 776, 780, 783, it appeared that the trustees of a mortgage covering all the property of a railroad company and all the revenues and income thereof, brought suit to foreclose the mortgage and had a receiver appointed. In the order appointing the receiver no special provision was made for the payment of debts owing for current expenses. When the receiver took possession the rail-

Opinion of the Court.

ble, from the fact that the large judgment for the right of way was obtained about the same time the receiver was appointed, that the change of possession was affected to avoid anticipated embarrassments from that cause. But, however that may be, there certainly is no complaint of a diversion by the company of the current earnings from the payment of the current expenses. So far as anything appears on the record, the failure of the company to pay the debt to Bowen was due alone to the fact that the expenses of running the road and preserving the security of the bondholders were greater than the receipts from the business. Under these circumstances we think the debt was a charge in equity on the continuing income, as well as that which came into the hands of the court after the receiver was appointed as that before. When, therefore, the court took the earnings of the receivership and applied them to the payment of the fixed charges on the railroad structures, thus increasing the security of the bondholders at the expense of the labor and supply creditors, there was such a diversion of what is denominated in *Fosdick v. Schall* the 'current debt fund,' as to make it proper to require the mortgagees to pay it back. So far as current expense creditors are concerned, the court should use the income of the receivership in the way the company would have been bound in equity and good conscience to use it if no change in the possession had been made. This rule is in strict accordance with the decision in *Fosdick v. Schall*, which we see no reason to modify in any particular."

The opinion in that case thus concluded: "We do not now hold, any more than we did in *Fosdick v. Schall* or *Huidekoper v. Locomotive Works*, 99 U. S. 258, 260, that the income of a railroad in the hands of a receiver, for the benefit of mortgage creditors who have a lien upon it under their mortgage, can be taken away from them and used to pay the general creditors of the road. All we then decided, and all we now decide, is, that if the current earnings are used for the benefit of mortgage creditors before current expenses are paid, the mortgage security is chargeable in equity with the restoration of the fund which has been thus improperly applied to their use."

Opinion of the Court.

In *Union Trust Co. v. Morrison*, 125 U. S. 591, 609, 612, the contest was between the mortgagees and Morrison who had become surety in a bond given by an insolvent railroad company which was harassed by suits in order to prevent a levy by a sheriff upon its rolling stock. Subsequently a suit was brought to foreclose a mortgage upon the railroad. The giving of the bond undoubtedly protected the company's property from seizure and enabled it to remain a going concern, and saved it to the mortgagees. This court, speaking by Mr. Justice Bradley, said: "Even if it [the rolling stock] would have been subject to the mortgage, when taken on execution, nevertheless it could have been taken,¹ and this would necessarily have disturbed, and perhaps interrupted, the operations of the railroad, by separating the property seized from the corpus of the estate. The trustees of the mortgage might have prevented such a catastrophe, it is true, by filing a bill of foreclosure and for an injunction and receiver; but they did not choose to take this course until nearly three years afterwards; on the contrary, they allowed the railroad company to continue to use the property, and to take care of it for them, and stood by and saw Morrison (who had no interest in the matter) put his hands into the fire and rescue the rolling stock of which they were to receive the benefit — both directly, by receiving the property itself without contest or controversy, and indirectly, by keeping up the railroad as a going concern. Morrison's money, or the fruits of it, has gone into their pockets. And, in this regard, we make no distinction between the mortgagees, the bondholders, whom they represented, the nominal purchasers, Horsey and Canda, or the present company. They were all one and the same in interest. If the property became justly affected by the equity of the petitioner's claim, it remains so affected in the hands of the present company." Referring to prior cases, and dis-

¹ The constitution of Illinois of 1870, in which State the case arose, declared, Article XI, § 10, that "the rolling stock and other movable property belonging to any railroad company or corporation in this State shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals."

Opinion of the Court.

claiming any purpose to modify the rule charging operating expenses upon current earnings, the court said: "The present claim is of a different character, based upon a *bona fide* effort made by the intervenor to preserve the fund itself from waste and spoliation after the mortgage was in arrear and the right to reduce it to possession had accrued. But even here, as we have seen, if the claimant could pursue only the earnings, it is shown that they have been appropriated to the purchase of property which has been added to the fund."

In *St. Louis, Alton &c. Railroad v. Cleveland, Columbus &c. Railway*, 125 U. S. 658, 673, the court, speaking by Mr. Justice Matthews, after stating that ordinarily the unsecured debts of an insolvent railroad company cannot take precedence in the distribution of the proceeds of a sale of the property itself over those creditors who are secured by prior and express liens, said: "There are cases, it is true, where, owing to special circumstances, an equity arises in favor of certain classes of creditors of an insolvent railroad corporation otherwise unsecured, by which they are entitled to outrank in priority of payment, even upon a distribution of the proceeds of a sale of the body of the property, those who are secured by prior mortgage liens." "The rule," the court said, "governing in all these cases was stated by Chief Justice Waite in *Burnham v. Bowen*, 111 U. S. 776, 783, as follows: 'That if current earnings are used for the benefit of mortgage creditors before current expenses are paid, the mortgage security is chargeable in equity with the restoration of the fund which has been thus improperly applied to their use.' There has been no departure from this rule in any of the cases cited; it has been adhered to and reaffirmed in them all."

In *Kneeland v. American Loan & Trust Co.*, 136 U. S. 89, 97, this court said: "The appointment of a receiver vests in the court no absolute control over the property, and no general authority to displace vested contract liens. Because in a few specified and limited cases this court has declared that unsecured claims were entitled to priority over mortgage debts, an idea seems to have obtained that a court appointing a receiver acquires power to give such preference to any general and

Opinion of the Court.

unsecured claims. It has been assumed that a court appointing a receiver could rightfully burden the mortgaged property for the payment of any unsecured indebtedness. Indeed, we are advised that some courts have made the appointment of a receiver conditional upon the payment of all unsecured indebtedness, in preference to the mortgaged liens sought to be enforced. Can anything be conceived which more thoroughly destroys the sacredness of contract obligations? One holding a mortgage debt upon a railroad has the same right to demand and expect of the court respect for his vested and contracted priority as a holder of a mortgage on a farm or lot. So, when a court appoints a receiver of railroad property, it has no right to make that receivership conditional on the payment of other than those few unsecured claims which, by the rulings of this court, have been declared to have an equitable priority. No one is bound to sell to a railroad company or to work for it, and whoever has dealings with a company when property is mortgaged must be assumed to have dealt with it on the faith of its personal responsibility, and not in expectation of subsequently displacing the priority of the mortgage liens. It is the exception, and not the rule, that such priority of liens can be displaced." Again: "It is the exception, and not the rule, that such priority of liens can be displaced. We emphasize this fact of the sacredness of contract liens, for the reason that there seems to be growing an idea that the chancellor, in the exercise of his equitable powers, has unlimited discretion in this matter of the displacement of vested liens." These principles were reaffirmed in *Thomas v. Western Car Co.*, 149 U. S. 95, 110, in which it was held that the car company there seeking a preference over mortgage creditors had contracted upon the responsibility of the railroad company, and not in reliance upon the interposition of a court of equity; consequently its claim to a preference was denied.

In *Virginia & Alabama Coal Co. v. Central Railroad & Banking Co.*, 170 U. S. 355, 365, 368, the court, referring to the decision in *Burnham v. Bowen*, said: "It was thus settled that where coal is purchased by a railroad company for use in operating lines of railway owned and controlled by it, in

Opinion of the Court.

order that they may be continued as a going concern, and where it was the expectation of the parties that the coal was to be paid for out of the current earnings, the indebtedness, as between the party furnishing the materials and supplies and the holders of bonds secured by a mortgage upon the property, is a charge in equity on the continuing income, as well that which may come into the hands of a court after a receiver has been appointed as that before. It is immaterial in such case, in determining the right to be compensated out of the surplus earnings of the receivership, whether or not during the operation of the railroad by the company there had been a diversion of income for the benefit of the mortgage bondholders, either in payment of interest on mortgage bonds or expenditures for permanent improvements upon the property. Nor is the equity of a current supply claimant in subsequent income arising from the operation of a railroad under the direction of the court affected by the fact that, while the company is operating its road, its income is misappropriated and diverted to purposes which do not inure to the benefit of the mortgage bondholders and are foreign to the beneficial maintenance, preservation and improvement of the property."

In the opinion in that case the court observed that it did not intend to detract from the force of the intimations contained in *Kneeland v. American Loan & Trust Co.* and *Thomas v. Western Car Co.*, above cited, "as to the necessity of a court of equity confining itself within very restricted limits in the application of the doctrine that in certain cases a court, having a road or fund under its control, may be justified in awarding priority over the claims of mortgage bondholders to unsecured claims originating prior to a receivership." And it was further said: "In neither the *Kneeland* nor the *Thomas* case was there any intention to question the prior decisions of the court, which allowed priority to claims based upon the furnishing of essential and necessary current supplies, not sold upon mere personal credit, against the surplus income arising during the operation of the road under the direction of a court of equity."

It is apparent from an examination of the above cases that

Opinion of the Court.

the decision in each one depended upon its special facts. This court has uniformly refrained from laying down any rule as absolutely controlling in every case involving the right of unsecured creditors of a corporation, whose property is in the hands of a receiver, to have their demands paid out of net earnings in preference to mortgage creditors. But it may be safely affirmed, upon the authority of former decisions, that a railroad mortgagee when accepting his security impliedly agrees that the current debts of a railroad company contracted in the ordinary course of its business shall be paid out of current receipts before he has any claim upon such income; that, within this rule, a debt not contracted upon the personal credit of the company but to keep the railroad itself in condition to be used with reasonable safety for the transportation of persons and property, and with the expectation of the parties that it was to be met out of the current receipts of the company, may be treated as a current debt; that whether the debt was contracted upon the personal credit of the company, without any reference to its receipts, is to be determined in each case by the amount of the debt, the time and terms of payment, and all other circumstances attending the transaction; and that when current earnings are used for the benefit of mortgage creditors before current expenses are paid, the mortgage security is chargeable in equity with the restoration of any funds thus improperly diverted from their primary use. The doctrine announced in *Burnham v. Bowen* — in which case the decisions in prior cases were affirmed — is thus expressed in the recent case of *Virginia & Alabama Coal Co. v. Central Railroad Company*, above cited: "The dominant feature of the doctrine as applied in *Burnham v. Bowen*, is that, where expenditures have been made which were essentially necessary to enable the road to be operated as a continuing business, and it was the expectation of the creditors that the indebtedness created would be paid out of the current earnings of the company, a superior equity arises in favor of the material man as against the mortgage bonds in the income arising both before and after the appointment of a receiver from the operation of the

Opinion of the Court.

property. The equity thus held to arise when a purchase of necessary current supplies is made by the owning company is not in anywise influenced by the fact that the company itself is the purchaser of the supplies, but is solely dependent upon the fact that the supplies are sold and purchased for use and that they are used in the operation of the road, that they are essential for such operation, and that the sale was not made simply upon personal credit, but upon the tacit or express understanding that the current earnings would be appropriated for the payment of the debt."

Can the decree below be sustained consistently with these principles? Are the debts due the Carnegie Company of the class designated in the adjudged cases as current debts contracted, not on the personal credit of the railroad company, but in the ordinary course of its business and to be met out of current receipts? As already said, whether the parties, seller and buyer, had in view only the personal credit of the latter is to be determined in each case by its special facts, including the amount of the debt and the terms of payment.

All the rails furnished by the Carnegie Company were not supplied under one contract — a circumstance not to be ignored when determining whether the debts were of the kind that would ordinarily be met out of current receipts. The first contract between the Carnegie Company and the Danville Company was made June 10, 1891 — within less than twelve months before the appointment of receivers in the Clyde suit. It called for the delivery by the Carnegie Company, during the month of July, 1891, of only 2500 gross tons of rails for which the railroad company was to pay thirty dollars per gross ton, in its notes at four months from date of shipment *without interest*, with privilege of one renewal for three months with interest at the rate of 5 per cent per annum, and a second renewal for three months with interest at the rate of 6 per cent per annum. The railroad company reserved the option to increase by 200 or 300 the number of tons to be delivered, making the total delivery 2700 or 2800 tons. That option was exercised. By another arrangement between

Opinion of the Court.

the parties entered into July 21, 1891, the contract was further extended to cover 1656 tons of rails at the same price, terms and delivery. Subsequently, by agreement of October 2, 1891, provision was made for the delivery of 200 additional tons at the price of \$26 per ton. The delivery of the rails was in varying amounts and at different times between July 25, 1891, and October 10, 1891. The whole quantity delivered was 4203 $\frac{335}{40}$ tons, worth \$125,067.39. Notes were given by the railroad company, and they were renewed at their respective maturities. Those last given, and which were unpaid at the time of the institution of the Clyde or insolvency suit, were each payable at three months, except the last one, which was at four months. They were of the following dates and amounts: March 21, 1892, \$38,251.77; March 24, 1892, \$35,499.38; April 4, 1892, \$12,786.16; May 16, 1892, \$5355.09; June 7, 1892, \$33,174.99. The first note was due June 21-24, 1892, (six days only after the appointment of receivers in the Clyde suit,) and the last October 7-10, 1892.

The rails so received from Carnegie Company were used by the Danville Company on the following roads in its possession and under its control: 1108.5 tons 56lb, \$33,174.99, on the Northeastern Railroad of Georgia; 1270 tons 70lb, \$37,713.75, on the Virginia Midland Railroad; 1793.5 tons 70lb, \$53,258.69, on the Richmond and Danville Railroad; 31.2 tons 70lb, \$920.56, on the Georgia Pacific Railroad. This use of the rails is shown by the report of special masters, and to that report on this point no exceptions were filed by either party.

What was the condition of the roads owned and controlled by the Danville Company at the time the rails were purchased and used? It was in the power of the railroad company and its receivers, who had possession of the books of the company, to have furnished evidence on this point that would have removed all possible doubt. But there is enough in the record to show that the rails purchased from the Carnegie Company were needed in order that the roads in question might be kept by the railroad company in that condition of safety which its duty to the public and to the mortgage bondholders required. In August, 1892, *immediately after the receivers took posses-*

Opinion of the Court.

sion of the railroads constituting the Danville system, they reported to the court that the financial difficulties of the Danville Company during the previous two years had "prevented the operating officers from being able to expend the proper amount *for new rails, and upon the roadbed and structures, to keep the railroad in the condition in which it should be maintained*, and it will be necessary for the receivers, during the summer and autumn, to make a much larger expenditure than they would for ordinary maintenance." Here is a direct admission by the receivers that during the *two years* immediately preceding their appointment the railroad company had not expended for new rails and upon the roadbed and structures the amount necessary to keep its road in proper condition. There is no evidence in the record which even tends to show that the statements of the receivers on this point were not strictly accurate. But this purchase of new rails proved to be inadequate; for on the 27th of January, 1894, the foreclosure receivers represented to the court, by petition, that "*for the proper and economical operation of the lines of railroad of which they are receivers, and for the safety of passengers and property transported over such roads, as required by the order of this court appointing such receivers, two thousand tons of new steel rails are an absolute necessity*;" and that they "had negotiated with and purchased from the Carnegie Steel Company, Limited, subject to the approval of the court, that quantity of rails at the cost of \$24 per ton." The court made an order in accordance with that petition. Again, on the 13th day of April, 1894, the court — all parties to the foreclosure suit consenting thereto, including the bondholders' committee — made an order authorizing the receivers to purchase 2500 tons of new steel rails in order "*to properly operate the railroads*" in their charge, "*and for the safety of persons and property transported.*"

It is apparent that the purchases of new steel rails while the railroads were in possession of receivers were made in the ordinary course of business and were properly chargeable upon and payable out of current receipts in preference to the claims of mortgage creditors. In every substantial sense the

Opinion of the Court.

expenses thus incurred were operating expenses. They were incurred in the interest of mortgage creditors, the value of whose securities depended upon the unity of the Danville system being preserved and the interests of all concerned not allowed to go to ruin. Why should a different rule be applied to the contracts made with the Carnegie Company *shortly before the appointment of receivers in the Clyde suit*, the original contract being for only 2500 tons, and the last one for only 1656 tons? Is it to be said that the contract for 2000 tons of steel rails and the contract for 2500 tons made by the receivers in the foreclosure suit created debts of a preferential character, while contracts made by the railroad company of exactly the same kind shortly before the appointment of receivers for 2500 and 1656 tons of steel rails could not under any circumstances become a preferential debt chargeable upon current receipts? Surely the quantity of rails purchased from the Carnegie Company and delivered in 1891 was insignificant in view of the interests involved and the extensive mileage of the Danville system, and was by no means so large as to suggest that they were to be used in constructing new and additional road, and not to keep existing roads in proper condition for use. Every railroad company must have on hand a limited quantity of rails in order to keep every part of its line in proper and safe condition. It is evident that the Carnegie rails purchased shortly before the receivers in the Clyde suit were appointed — the rails here in question — were obtained for the same reason that induced the subsequent purchases by the receivers. No one will say that the use of these rails did not add directly to the value of the securities of mortgage creditors. Within the reason of the rule adverted to, the debts contracted with the Carnegie Company were as much current debts in the ordinary course of the business of the railroad company as were the debts contracted by the receivers under the orders of court, when they purchased new rails to put the road in safe condition, or when they purchased at one time four passenger locomotives, and at another time eight passenger and freight locomotives, the cost of which was charged upon the income in their hands. Is it to be said

Opinion of the Court.

that such expenses incurred by the receivers were preferential debts, but that debts incurred by the railroad company shortly prior to the receivership for rails needed to keep its road in safe condition for use are not of that class?

We next inquire whether it was not at the time the expectation of both parties, vendor and vendee, that the rails delivered by the Carnegie Company between July 25, 1891, and October 10, 1891, should be paid for out of the current earnings of the railroad company? The attendant circumstances require an affirmative answer to this question, although the parties did not in express words declare that the debts due contracted with the Carnegie Company were to be charged upon the current earnings of the railroad company. The quantity of rails was not so large as to preclude the expectation that they could be paid for out of the current earnings of the railroad company. As already said, it was a very small quantity for purposes of ordinary or necessary repairs, and there is nothing in the record to show that the Carnegie Company relied merely or exclusively on the personal credit of the railroad company. The renewal notes executed by the railroad company were *all* within the *three months immediately preceding the appointment of the receivers*. The short credit given strongly indicates, and the fair inference from the record is, that the parties contemplated that the rails were to be paid for out of the current earnings of the railroad. The taking of notes does not indicate the contrary, but only shows that the vendor company preferred to have its debt evidenced by commercial paper which it could use, rather than to stand upon open account. In *Burnham v. Bowen* it was said: "When the receiver was appointed the debt was evidenced by business paper maturing at a future date. It was no waiver of any claim on the fund which might come into the hands of the receiver to renew the paper at maturity for the convenience of the holder. It was undoubtedly given originally to enable the coal company to use it as commercial paper if occasion required, and the renewal may have become desirable on account of the use which had been made of it." The equities of the creditor furnishing that which protected and preserved

Opinion of the Court.

the mortgage security and materially increased its value are none the less because the original debt was evidenced by the notes of the company, taken for its convenience and renewed for its accommodation.

It may be said that a part of the rails furnished by the Carnegie Company were not used on the Danville railroad, although used on roads belonging to the Danville system. But that is not a controlling circumstance. The contracts were made with the Danville Company, and, as between the contracting parties, the debts so incurred were, under the circumstances stated, current debts chargeable upon the current receipts of the railroad company that purchased the rails. The rights of the Carnegie Company are none the less because the Danville Company chose, after obtaining the rails, to use a part of them on roads under its control and in its possession, and whose preservation in proper condition was vital to its successful operation. The scheme of reorganization was in the interest of the stockholders and mortgage creditors of the roads constituting the Danville system, and chiefly of the bondholders represented by the Central Trust Company, the trustee in the consolidated gold mortgage. That company, as we shall presently show, stood by and assented to, indeed approved, the application, for the benefit of the bondholders represented by it, of funds which should have been applied in payment of current debts contracted in the interest of mortgage creditors before the appointment of receivers in the Clyde suit. Suppose the court had directed the receivers in the Clyde suit, before turning over the property to the receivers in the foreclosure suit, to pay the claims of the Carnegie Company, is it possible that the mortgage creditors would have been heard to object to such an order? Certainly not, if it appeared, as it does satisfactorily appear in the present case, that the Carnegie debts were incurred in the ordinary course of business for the purpose of keeping the railroad in safe condition for use by the public. If the Carnegie claims were preferential debts when the control of the property passed from the railroad company to the receivers in the insolvency or Clyde suit, the latter were bound in equity to

Opinion of the Court.

do what the railroad company would have been required to do if it had retained control of the property.

If the parties to the contract contemplated that the notes given for the rails should be paid for out of the current earnings of the railroad, and if the Carnegie Company lost no equity merely by renewing the notes, it follows, under the settled doctrine of this court, that the mortgagees could not have objected to the payment of the renewal notes out of any net earnings in the hands of receivers, although the contract for the rails was a few months back of the six months immediately preceding their appointment. Each case, as already observed, must depend largely upon its special facts. In some cases the courts, in their administration of railroad property by receivers, have refused to give priority to unsecured claims that did not accrue within six months immediately preceding the appointment of receivers. Such a rule will do full justice in most cases to creditors who are entitled to look to current receipts for the payment of current debts. But no absolute rule on the subject has been prescribed by statute or by judicial decisions. A claim accruing back of the six months immediately preceding the appointment of a receiver may, under the circumstances of particular cases, be accorded the same priority in the distribution of earnings that belongs to like claims arising within that period. Touching this question of time and the principles upon which the equitable rights of creditors in such cases as this rest, Mr. Justice Brewer said, in *Blair v. St. Louis &c. Railway Co.*, 22 Fed. Rep. 471, 474: "The idea which underlies them I take to be this: that the management of a large business, like that of a railroad company, cannot be conducted on a cash basis. Temporary credit, in the nature of things, is indispensable. Its employes cannot be paid every month. It cannot settle with other roads its traffic balances at the close of every day. Time to adjust and settle these various matters is indispensable. Because, in the nature of things, this is so, such temporary credits must be taken as assented to by the mortgagees. . . . In this view, such temporary credits accruing prior to the appointment of the receiver must be recognized by the mortgagees

Opinion of the Court.

and such claims preferred. Now, for what time prior to the appointment of a receiver may these credits be sustained? There is no arbitrary time prescribed, and it should be only such reasonable time as, in the nature of things and in the ordinary course of business, would be sufficient to have such claims settled and paid. Six months is the longest time I have noticed as yet given. Ordinarily, I think that is ample. Perhaps, in some large concerns, with extensive lines of road and a complicated business, a longer time might be necessary."

What was done with the earnings of the property that originally came to the hands of the receivers, as well as with the earnings during the receivership under the Clyde bill and also during the receivership in the foreclosure suit instituted by the Central Trust Company? As to these matters there is no room for dispute. Assuming, in view of what has been said, that the claims of the Carnegie Company were current debts chargeable upon current earnings of the railroad property, even while in the hands of the receivers, and therefore to be preferred to claims of mortgage creditors, the next inquiry is whether the current receipts were applied during the receiverships for the benefit of the bondholders or otherwise when they should have been applied to the payment of current or preferential debts including the debts due to the Carnegie Company.

During the insolvency or Clyde receivership, from June 17, 1892, to July 31, 1893, the net earnings were \$3,297,792.31. Among the items of expenditure during the same period were the following: Construction, \$232,134.34, of which \$19,717.05 was for *construction on the Danville road*; Equipment, \$81,390.32, of which \$74,733.28 was for *equipment on the Danville road*; Interest, Rentals and Dividends, \$3,249,481.89, of which \$396,522.14 was for *the Danville road*, \$709,324 for the Virginia Midland, \$20,265 for the North Eastern, and \$232,127 for the Georgia Pacific road, the last four roads being those on which, according to the special master's report, the Carnegie rails were used; Sinking Fund, Richmond and Danville road, five per cent equipment mortgage, \$67,205, and Car Trust payments, \$209,500.

Opinion of the Court.

Between August 1, 1893, and December 31, 1893, out of the net earnings of the Danville system, excluding certain lines, the receivers paid among other sums the following: Construction on *Danville road*, \$9232.61; Equipment on same road, \$6791.35; Interest, Rentals and Dividends, \$626,735.85, which included \$48,082.90 for the Danville road, Virginia Midland, \$199,664.50, and \$87.50 for the North Eastern Railroad; Sinking Fund, Danville Company, equipment mortgage, \$37,790; Car Trust payments, \$51,160.

The above figures are found in the statement of the result of the operations of the Danville system for the periods named.

Looking at the cash statement of the receipts and disbursements of the Richmond and Danville Railroad alone, we find that from June 16, 1892, to July 31, 1893, the receipts were \$15,432,055.46. In this sum were included \$480,427.91 cash received from the Danville Company when the Clyde or insolvency receivers were appointed, and \$671,363.40 collected on accounts turned over to those receivers by the railroad company. The disbursements during the above period were \$15,290,730.27, leaving in the hands of the receivers on July 31, 1893, \$141,325.19 in cash which was turned over to the foreclosure receivers. The disbursements included among other items the following: Interest and Rentals, \$3,249,481.89; Car Trust payments and Sinking Funds, \$486,368.16.

The account of disbursements for the Danville road from August 1, 1893, to November 30, 1893, shows, among other things, the payment of Interest and Rentals, \$591,457.42; Car Trust payments and Sinking Fund, \$88,950.

The total floating debt of the Richmond and Danville Railroad remaining unpaid was \$318,324.71, of which \$22,186.53 represented a claim of the Western Union Telegraph Company in part for labor and supplies and in part for construction of telegraph line, and \$90,000 represented a claim of the Pullman Palace Car for mileage of cars. Of the balance, \$125,067.39 represented the claims of the Carnegie Company, and \$80,317.98 represented all other claims.

These figures show that both during the receivership in the

Opinion of the Court.

Clyde suit and the receivership in the foreclosure suit immense sums were expended in paying interest, sinking fund and car trust debts, and for construction and equipment, which were all for the benefit of mortgage creditors, and which, to the extent necessary, should have been applied in payment of preferential claims, including those of the Carnegie Company. It is a clear case of a diversion of income from the payment of current debts in the interest of mortgage creditors. Judge Simonton well said: "There can be no question that the steel rails furnished by the Carnegie Steel Company come within the class of supplies necessary to keep the railroad company a going concern; and the evidence establishes the fact that after incurring the debt the railroad company was in the receipt of large earnings, which were applied to permanent improvements, rentals and interest on the mortgage debt; that the receivers who, under the Clyde bill, took possession of the property, earned large income which was applied in the same way, leaving this debt unpaid; and that when these receivers were discharged they showed in their accounts a cash surplus, which was duly paid over to their successors under the Central Trust Company bill." Looking at the case in the light of the principle that a mortgagee cannot require from the mortgagor an account of the earnings, tolls and income until he has made demand therefor or for a surrender of possession under the provisions of the mortgage, *Sage v. Memphis & Little Rock Railroad*, 125 U. S. 361, 378; *Fosdick v. Schall*, 99 U. S. 235, 253, the Circuit Court of Appeals also said: "When, therefore, the receivers appointed at the instance of stockholders and creditors took possession, they enjoyed the same right to the earnings and income which the railroad company enjoyed, and rightfully received them. As the railroad company would have been bound to use this income in the payment of the current expenses for labor and supplies, the receivers should have done so also; but, instead of this, the receivers diverted the earnings, income and funds in their hands toward the betterment of the property, permanent improvements and additions to it, and in payment of interest. And this was natural. They were appointed to

Opinion of the Court.

take possession of the property and to conserve it until a plan of reorganization could be adopted and perfected. To facilitate this plan, the property must be kept up. To this end the funds coming from earnings were used. When the purpose of the first receivership was accomplished, the mortgage creditors came in and reaped the benefit. Surely those creditors whose claims were neglected, and from whom the earnings were diverted, have the right to ask and receive at the hands of the court the recognition and preservation of their claims." 42 U. S. App. 150. Judge Morris filed a concurring opinion and took the same general view of the case as that expressed by Judge Simonton for the court. He said that the case was that of "a supply creditor seeking to be paid out of the earnings which came to the receivers after his debt matured and which were diverted by them, without opposition from the mortgagee, to expenditures which directly resulted in preserving the mortgaged property, which earnings, if the receivers had not been appointed, there is no ground for supposing would not have been applied by the company to the payment of the supply creditor's debt." 42 U. S. App. 160, 161.

We must not be understood as saying that a general unsecured creditor of an insolvent railroad corporation in the hands of a receiver is entitled to priority over mortgage creditors in the distribution of net earnings simply because that which he furnished to the company prior to the appointment of the receiver was for the preservation of the property and for the benefit of the mortgage securities. That, no doubt, is an important element in the matter. Before, however, such a creditor is accorded a preference over mortgage creditors in the distribution of net earnings in the hands of a receiver of a railroad company, it should reasonably appear from all the circumstances, including the amount involved and the terms of payment, that the debt was one fairly to be regarded as part of the operating expenses of the railroad incurred in the ordinary course of business, and to be met out of current receipts.

Passing by as unnecessary to be determined some of the questions discussed by counsel, our conclusion is that as current earnings which should have been applied in meeting cur-

Dissenting Opinion: White, J.

rent expenses or liabilities, including the debt due the Carnegie Company, were diverted for the benefit of mortgage creditors, it was the duty of the court to see that that company was reinstated in its claim of priority over the mortgage creditors in the distribution or application of the net earnings of the property. That duty was properly performed by the Circuit Court, and the decree of the Circuit Court of Appeals affirming the judgment of the Circuit Court is

Affirmed.

MR. JUSTICE WHITE dissenting.

As I comprehend the record, the rails for which preferential payment is now allowed did not serve the purpose of ordinary repair and maintenance of the tracks in which they were laid. Moreover, my understanding of the proof is that it obviously shows there was no surplus revenue at any time legally applicable to the claim now allowed, and hence that no such revenue was diverted to the benefit of the foreclosing mortgage creditors during either of the receiverships by way of betterments or otherwise. Moreover, I think the proof is clear that, conceding every possible expense which can be claimed to have been a betterment or in any wise to have inured to the benefit of the foreclosing mortgage creditors, nevertheless as such mortgage creditors have contributed to the payment of the general creditors, by the assumption of receivers' certificates and cash contributions, a sum largely in excess of the amount of such payments for assumed betterments, etc., the mortgage creditors are entitled to credit for their advances, and therefore there would be a large balance in their favor. In effect, to state the presumed betterments and charge them against the foreclosing mortgage creditors without referring to or taking into account their contributions, is to charge them for betterments for which they have already paid. *St. Louis, Alton &c. Railroad v. Cleveland, Columbus &c. Railway*, 125 U. S. 658.

I therefore dissent.

MR. JUSTICE BREWER, not having heard the argument in this case, did not participate in the decision.